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INTRODUCTION TO POLITICAL SCIENCE

BY

RAYMOND GARFIELD GETTELL, M.A.

PROFESSOR OF POLITICAL SCIENCE IN AMHERST COLLEGE

REVISED EDITION

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March 1946

The Athenæum Press
GINN AND COMPANY · PROPRIETORS · BOSTON · U.S.A.

PREFACE

At the present time no field of knowledge is growing more rapidly into favor, both in the colleges and universities, and among thinking people in general, than that of the social sciences. Looking to the past, they are linked with the whole process of biologic and psychologic evolution, and trace the origin and development of human institutions and ideas. Dealing with the present, they describe the organization and activities of those social groups in which we all live. Looking to the future, they open up the important political, economic, and social problems that future generations must solve.

Within this general field probably no subdivision so happily combines material of academic interest to the student and possibilities of practical application, as does political science. The state is the greatest institution that man has created, and its scope of activities promises to be increasingly extensive as society becomes more complex. It seems, therefore, that there is need for a book that will give a general outline of political science, viewing the state from the standpoint of past development and present conditions. For the special student in this department of knowledge it will serve as a background for more specialized work in its various divisions; for the general reader it will open up the important questions with which, in modern democracies, all good citizens should be familiar. There is an especial need for a textbook in political science for college and university classes, and in the arrangement and treatment of material in this volume that end has been constantly kept in mind. The references at the head of each chapter will suggest wider reading and open up the general literature of the subject.

This volume aims to add little to the sum total of human knowledge. It draws freely upon the work of such scholars as Burgess,

Lowell, Wilson, Willoughby, Goodnow, Dunning, Reinsch, and many others in this country, to say nothing of the numerous English and continental writers whose work in this field is excellent. Valuable suggestions have also been received from Leacock's "Elements of Political Science" and from Dealey's "The Development of the State," both of which appeared while this work was in preparation. The chief purpose of this book is to combine, in brief compass, the essentials of political science, the details of which have been so ably worked out by these men; and, by showing the interrelations among the various divisions of the subject, to bring out more clearly the essential unity of the state. While based upon a certain theory of the state, it aims to give a fair statement of those principles concerning which scholars are not yet entirely in agreement. In a word, it is, as its title indicates, an Introduction to Political Science, outlining and suggesting the origin, development, organization, and activities of the state.

The author wishes to express his appreciation of the assistance he has received from Mr. W. N. Carlton, formerly librarian of Trinity College, at present librarian of the Newberry Reference Library of Chicago; of the helpful criticism of his former teacher, Dr. J. Lynn Barnard, now of the School of Pedagogy of Philadelphia; of the inspiration given by his former teacher, Dr. Leo S. Rowe, of the University of Pennsylvania; and especially of the unwearied coöperation of his wife, whose careful and critical preparation of the manuscript has made improvements upon almost every page. Valuable assistance in the verification of references and in the preparation of the Index has been given by Mr. J. E. Brown, one of the author's students in Trinity College.

RAYMOND GARFIELD GETTELL

TRINITY COLLEGE
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INTRODUCTION TO POLITICAL SCIENCE

OUTLINE OF CHAPTER I

REFERENCES

POLITICAL SCIENCE

1. HISTORICAL POLITICAL SCIENCE
2. POLITICAL THEORY
3. DESCRIPTIVE POLITICAL SCIENCE
4. APPLIED POLITICAL SCIENCE

RELATION TO ALLIED SCIENCES

1. POLITICAL SCIENCE AND SOCIOLOGY
2. POLITICAL SCIENCE AND HISTORY
3. POLITICAL SCIENCE AND ECONOMICS
4. POLITICAL SCIENCE AND ETHICS
5. POLITICAL SCIENCE AND JURISPRUDENCE

INTRODUCTION

CHAPTER I

NATURE AND SCOPE OF POLITICAL SCIENCE

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1. Political science. In order to convey a comprehensive idea of the nature and scope of political science, it is necessary to outline the field of knowledge that it covers and to indicate the boundary lines that separate it from other allied sciences. Political science may be briefly defined as the science of the state. It deals with mankind viewed as organized political units. It includes a historical survey of the origin of the state, tracing the beginnings of political life as they emerged from earlier social forms. It considers, also, the development of the state as it evolved from simple to complex, — from the loosely organized tribal horde to the modern state with its highly specialized government. Such a study must include not only the actual historic evolution of the state, but also the development of political ideas and theories, since they powerfully influenced state development, especially after man began consciously to direct and modify what was at first largely unconscious growth. Political science must also analyze the fundamental nature of the state, its organization, its relation to the individuals that compose it, and its relation to other states. In addition, it

must describe modern states as they actually exist and must compare and classify their governments. Finally, political science deals, to a certain degree, with what the state ought to be, — with the ultimate ends of the state and the proper functions of its government. It is thus a historical investigation of what the state has been, an analytical study of what the state is, and a politico-ethical discussion of what the state should be.

Its leading subdivisions, therefore, are :[1]

1. *Historical political science,* — the origin and development of political forms.

2. *Political theory,* — a philosophic study of the fundamental concepts of the state.

3. *Descriptive political science,* — an analysis and description of existing political forms.

4. *Applied political science,* — the principles that should control the administration of political affairs ; the proper province and functions of government.

2. Relation to allied sciences. Political science, as one of the sciences dealing with the relations of man to man, stands in close affiliation with the other social sciences, as a subdivision of a broader field, or as a general field including more specialized subdivisions, or as an allied science having points of contact. For example :

1. *Political science and sociology.* Sociology, the science of society, deals with man in all his social relations. These may vary from commercial or religious interests, almost world-wide in scope, to the single family or the narrowest fraternal group ; and such organizations are, in many cases, little concerned with state boundaries. Political science, the science of the state, deals with man in his political relations alone. It views mankind as divided into organized political societies, each with its government which creates and enforces law. Political science is thus narrower than sociology, and is, in a general sense, one of its subdivisions.

2. *Political science and history.* History is a record of past events and movements, their causes and interrelations. It includes a survey of conditions and developments in economic, religious,

[1] Willoughby, The Nature of the State, p. 4.

intellectual, and social affairs, as well as a study of states, their growth and organization, and their relations with one another. Economic, religious, intellectual, and social institutions, however, have no bearing upon political science, except as they affect the life of the state. On the other hand, political history furnishes the major part of the raw material for political science. From its data concerning numerous concrete states are drawn the general conclusions of political theory as to the fundamental nature of the state; and on the basis of its information is built up the science of comparative government. Its records of past states, with their successes and failures, also throw light upon the vexed questions of the best form of government under given conditions, and of the proper functions of governmental activity. History gives thus, as has been aptly said, "the third dimension of political science."[1]

3. *Political science and economics.* Economics, the science of wealth, deals with man's individual and social activity in the production, distribution, and consumption of wealth, under conditions both physical and psychological. In so far as this activity is individual, or concerns any social organization except the state, its relation to political science is remote. An important part of economics, however, deals with the activity of the state in regard to wealth. Such subjects as taxation, currency, and governmental industries form a field common to both sciences, economics viewing them as certain forms of man's total activity with regard to wealth; political science viewing them as certain functions of governmental administration. In addition, economic conditions materially affect the organization and development of the state; and the state in turn, by its laws, frequently modifies economic conditions. The rise of feudal government on a basis fundamentally economic is a good example of the former; and even a casual acquaintance with modern conditions shows the close connection existing between business and politics. The way in which the state may influence economic conditions is illustrated by corporation legislation, tariff laws, and labor regulations.

4. *Political science and ethics.* Ethics, the science that deals with conduct in so far as conduct is considered right or wrong,

[1] Willoughby, The Nature of the State, p. 5.

also has points of contact with political science. The origin of moral ideas is closely connected with the origin of the state. Both arose in that early group life, based on kinship and religion, when custom was law and when moral and political ideas were not differentiated. With the development of civilization and the conflict between private and group interests, custom gave way to conscience, or individual morality, on the one hand, and to law, or political morality, on the other. Right and wrong with individual or social sanction were distinguished from rights and obligations with political sanction. Yet the relation between morals and law is still close. Moral ideas, when they become widespread and powerful, tend inevitably to be crystallized into law, since the same individuals that form social standards are those that comprise the state. On the other hand, laws that attempt to force moral ideas in advance of their time usually fail in administration. Besides, it is from the ethical standpoint alone that the state is ultimately justified; and the proper functions of government must be determined in last analysis on the basis of the ethical compromise that secures the greatest good to the individual and at the same time promotes the greatest common welfare.

5. *Political Science and Jurisprudence.* Jurisprudence, which may be briefly defined as the science of law, is properly classed as a subdivision of political science. The principles of law in general, and the specific rules that determine the organization of a given state, its relation to its citizens, and the regulations that it enforces among them, together with such agreements among states as approach definite legal statement and enforcement, — all are included in a science that attempts a complete explanation of state existence and activities.

PART I

THE NATURE OF THE STATE

OUTLINE OF CHAPTER II

References

Need for Definitions and Distinctions

Nation; Nationality

State

1. territory
2. population
3. organization
4. unity

Sovereignty

Government

Divisions of Political Science

CHAPTER II

PRELIMINARY DEFINITIONS AND DISTINCTIONS

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3. Need for definitions and distinctions. Before entering upon a discussion of the origin and growth of political institutions it is necessary to get a clear idea of some of the fundamental concepts of political science. This will not only give precision and definiteness to the use of certain expressions, but will also make more clear the scope and divisions of political science, and will show the relations existing among these divisions. No worker in this field can proceed far before meeting such terms as "nation," "state," "sovereignty," "government," and "law." Because of careless usage in ordinary speech, and because of their intrinsic importance, a more exact meaning for each will here be given.

4. Nation; nationality. The term "nation," from the standpoint of etymology, is an ethnic term (cf. *nasci*) and is so used by the Germans. In this sense it denotes a population speaking the same language and having the same customs and civilization, without regard to their political combination. On the other hand, English and American usage gives to the term "nation" a political signification, as denoting a body of individuals organized under a single government. For precision in nomenclature, therefore, it seems advisable to use the term "nationality" to denote a population having common bonds of race, language, religion, tradition, and history. These influences create the consciousness of unity that

binds individuals into a nationality. Such a population, other things being equal, tends to form a state; and the strength of a state depends in large degree upon its national unity. At the same time, in actual existence, the boundaries of nationality and of state seldom coincide. Almost all states include several nationalities, often widely variant, — the United States, the British Empire, Switzerland, and the Balkan states being conspicuous examples. Some peoples, for instance Jews and Poles, although for centuries retaining their nationality, failed to form states.

5. State. Since political science is the science of the state, a clear understanding of what is meant by the term "state" is all-important. From the beginning of social life men have lived under some form of public authority. The nature of this authority has varied, and it has exercised its functions through different forms of organization. Beneath these differences in the concrete manifestations of political life may be observed a practical identity of purpose; and by disregarding nonessential elements, and modifications that arise because of the demands of time, place, or circumstance, the very essence of the state may be discovered and the characteristics that distinguish it from other organizations may be clearly pointed out. In this way the nature of the state in the abstract, the universal phenomenon with which political theory deals, may be considered apart from the various concrete states that have existed from time to time, whose consideration belongs to the field of historical and descriptive political science. An analysis of the state shows its essential factors to be:

1. Territory 2. Population	Physical elements
3. Organization 4. Unity	Sovereignty

1. *Territory.* While history shows people in the hunting and fishing or pastoral stages of development, living under a tribal form of organization, in which the idea of definite territory played no part, it is doubtful whether the term "state" is properly applied to such a condition. As a later chapter will indicate,[1] the origin of

[1] See Chapter V.

the state is gradual, and the exact point at which an earlier social form changes into a distinct political form is difficult to fix. However, the occupation of permanent abodes and the idea of authority over definite areas powerfully affected the rise of political organization, as is shown by the history of the Hebrews after their conquest of Palestine, or of the Teutons after their settlement in the Roman Empire. At any rate, the possession of territory is a necessary basis for all modern states, and the idea of territorial sovereignty is firmly imbedded in present political thought. No people, such as the Jews, scattered over the earth without possessing a territory can form a state. While some writers on political science [1] qualify their assent to the necessity for territory, the consensus of opinion considers control over a definite part of the earth's surface to be a fundamental requisite for state existence. If the meaning of the term is broadened to include the general physical environment, — the arrangement of mountains, seas, and rivers, and those conditions of climate, soil, and resources under which all states must exist, — no one can deny that territory is an essential and most important factor in state life.

Ideas regarding the area over which a state should extend have widely varied. To the Greeks the narrow boundaries of a compact city seemed the proper limit; to the Romans the whole world was not too large for their concept of the state; while modern states have placed a certain amount of emphasis upon natural boundaries and geographic units. The influence that the physical environment exerts on state formation and development will be discussed later.[2]

2. *Population.* That territory must be inhabited in order to form a state is self-evident. Any attempt to fix definitely the number of persons that a state may include is obviously absurd, although Rousseau considered ten thousand the ideal number; and Aristotle, placing the minimum at ten, set the maximum at one hundred thousand.[3] Actual states, however, have varied widely in their population, the British Empire to-day numbering over four hundred million, while several states contain less than a half million each. The influence of population, from the standpoint of racial

[1] Holland, Elements of Jurisprudence, 10th ed., p. 44. [2] See Chapter III.
[3] Nicomachean Ethics, ix, 10; Politics, vii, 4.

and national conditions, on the rise and growth of states will be discussed later.[1]

3. *Organization.* Given a population inhabiting a definite territory, the next requisite is some method by which authority may be exercised over these individuals. Some organization must exist by which the state may express and administer its will. Either as a result of mutual agreement, based on natural development through common race, language, and traditions; or as a result of compulsion, based on the conquest of the weaker by the stronger, some form of political machinery or government, which either receives or compels obedience, must be created in order to form a state. This organization is the only outward manifestation of the state. Through it alone can the state have dealings with its citizens or with other states; hence the greater part of political science deals with states as concretely organized in their governments.

4. *Unity.* By unity is meant that the territory and population constituting a state cannot form a part of any wider political organization; neither can a state include any territory or population that does not form a part of it politically. Thus the so-called "states" of the United States are not states from the standpoint of political science, since they form parts of the wider political unit, the United States, which itself is one state. On the other hand, Europe, though a unit geographically, is not a state because it includes a number of separate political organizations, each of which is a state. Unity involves the idea of complete external independence and of absolute internal oneness; and a population possessing unity in this sense, if it occupies a definite territory and is organized by means of a government, invariably constitutes a state.

6. Sovereignty. If, then, territory, population, organization, and unity are the essential elements of a state, a still further analysis may be made. Leaving out of consideration territory and population as the physical elements or raw materials of which a state is composed, and combining organization and unity, the real essence of the state is found to be sovereignty. Viewed internally, this means that a state has complete authority over all the individuals that compose it; viewed externally, it means that a state is

[1] See Chapter IV.

completely independent of the control of any other state. Since a state possesses unity, no individual within the state is exempt from its authority, and no person or group of persons outside the state can offer interference. Since a state possesses organization, it has a government by means of which it enforces authority over its individuals and maintains its independence of other states. Sovereignty, i.e. absolute authority internally and absolute independence externally, is the distinctive characteristic of the state; and a population inhabiting a fixed territory and possessing sovereignty invariably constitutes a state. Stated in another form, it may be said that the constituent element of the state is population, but that population must possess two characteristics before it becomes a state: (1) territoriality; (2) sovereignty. Any population which possesses a settled territory and sovereign powers becomes, *per se*, a state. The sovereign will of the state, when expressed and enforced by means of its government, is called law.

7. Government. The nature of government has already been indicated. It is the organization or machinery of the state. All the citizens of the political community constitute the state; a much smaller number, though in modern states a fair proportion, comprise the government. It includes all those persons who are occupied in expressing or administering the will of the state, — the sum total of all the legislative, executive, and judicial bodies in the central, local, and colonial organs. Moreover, the terms "executive," "legislative," and "judicial" must not be interpreted in a narrow sense. When the electorate, through the suffrage, chooses governing officials, it is exercising the executive power of appointment; by means of the initiative and referendum it shares in legislation; and by jury service it becomes a part of the judiciary. Similarly the executive must be made to include that extensive and important group of officials known as the administration, which, with its own system of law and courts, has become in some states practically a separate department of government. Finally, some states have established organs exercising the specific function of making or amending the constitution. These also form parts of the government. In its broader sense, then, the government may be defined as the "sum total of those organizations that exercise or may

exercise the sovereign powers of the state." [1] Just as each state is a unit, so the government of each state is a unit, although separated for convenience into various departments and divisions. A state cannot exist without a government, and government exists only as the organization of a state. While the term "state" is an abstract term and may be conceived apart from the existence of any actual state, since all states are alike in essence, *government* is distinctly a concrete term and its forms vary, being determined in each case by the political conditions that obtain in each state. Government is thus the existing adjustment between the state and its individuals, and the means by which interstate relations are maintained, — the machinery through which the purposes of the state are formulated and executed.

8. Divisions of political science. The preceding discussion of fundamental concepts indicates the logical divisions of political science and their interrelations. The analysis of the state leads naturally to a consideration of the physical basis of the state, and there the subdivisions are territory and population. Sovereignty, viewed from its internal aspect, opens up the relations of state to individual; viewed from its external aspect, it leads to a discussion of international relations and the rules called international law. Again, when the ends of the state and the functions of government are considered, the same fundamental distinction between the individual on the one hand and the state on the other serves as the basis of the opposed doctrines of individualists and socialists. Finally, since the state manifests itself only in its governmental organization, a study of the origin and development of governmental forms and a comparative description of modern governments in their separation into legislative, executive, and judicial departments, and their division into central, local, and colonial organs will occupy a considerable part of this volume. Political science thus becomes, as defined by Bluntschli,[2] "the science which is concerned with the State, which endeavors to understand and comprehend the State in its conditions, in its essential nature, its various forms or manifestations, its development."

[1] Dealey, The Development of the State, p. 144.
[2] The Theory of the State, p. 1.

Note. This diagram indicates the divisions of political science, according to the plan followed in the arrangement of this volume.

- **Political science: The science of the state**
  - 1. Historical: Origin and development of the state
    - 1. Subjective: Political theories
      - 1. Ancient
      - 2. Medieval
      - 3. Modern
        - 1. Force
        - 2. Utilitarian
        - 3. Divine
        - 4. Social contract
        - 5. Organic
        - 6. Evolutionary
    - 2. Objective: Political institutions
      - 1. Tribal state
      - 2. Oriental empire
      - 3. Greek city state
      - 4. Roman world empire
      - 5. Feudal state
      - 6. National state
        - 1. Monarchy
        - 2. Democracy
  - 2. Descriptive: Nature of the state
    - 1. Territory
    - 2. Population
      - Physical elements of the state
    - 3. Organization
      - Constitution: Government
        - 1. Electorate
        - 2. Ordinary government
        - 3. Political parties
      - Sovereignty
        - 1. External: Relation of state to states: International law
          - 1. Peace
          - 2. War
          - 3. Neutrality
        - 2. Internal: Relation of state to individual
          - 1. From standpoint of state sovereignty
          - 2. From standpoint of individual liberty
          - Law
            - 1. Public
              - 1. Constitutional
              - 2. Administrative
              - 3. Criminal
            - 2. Private
    - 4. Unity
  - 3. Applied: Purpose of the state
    - 1. Province of government
      - 1. Anarchism
      - 2. Individualism
      - 3. General welfare
      - 4. Socialism
    - 2. Functions of government
      - 1. Essential
        - 1. Power
        - 2. Liberty
      - 2. Optional
        - 1. Nonsocialistic
        - 2. Socialistic

Constitution: Government
- 1. Departments
  - 1. Legislative
  - 2. Executive
  - 3. Judicial
  - → 1. Parliamentary (cabinet)
  - → 2. Nonparliamentary (presidential)
- 2. Divisions
  - 1. National
  - 2. Local
  - 3. Colonial
  - → 1. Unitary
  - → 2. Dual
    - 1. Confederate
    - 2. Federal

OUTLINE OF CHAPTER III

REFERENCES

IMPORTANCE OF THE PHYSICAL BASIS

1. THE NATURAL ENVIRONMENT
2. THE POPULATION

ELEMENTS OF THE PHYSICAL ENVIRONMENT

1. THE CONTOUR OF THE EARTH'S SURFACE
2. CLIMATE
3. RESOURCES
4. THE GENERAL ASPECTS OF NATURE

CONTOUR OF THE EARTH'S SURFACE

1. THE SIZE OF THE STATE
2. THE ISOLATION OF THE STATE
3. THE DIRECTION OF EXTERNAL ACTIVITY

CLIMATE

RESOURCES

1. MINERAL RESOURCES
2. VEGETABLE RESOURCES
3. ANIMAL RESOURCES

GENERAL ASPECTS OF NATURE

CHANGES IN ENVIRONMENT

CHAPTER III

PHYSICAL BASIS OF THE STATE

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9. Importance of the physical basis. In last analysis all phenomena are transformations of physical energy, and the activities of the state are no exception. Given the individuals that constitute the state, the various combinations of these individuals, the natural environment in which they exist and the interrelations among these, and natural science will explain the state in its own terms. Without encroaching upon this field, political science may at least view the raw materials of which the state is composed, and their influence on state formation and development. The analysis of the essential factors included in the state has already indicated its physical basis. Territory and population, or, stated more broadly, nature and man, are the foundations of the state as they are of all social organizations. A hasty survey of the influence that physical environment exerts on state life, and of the broader questions of race and the growth and distribution of mankind will form a valuable introduction to the later discussion of the origin and development of the state, and to those activities whose manifestations are

less obviously physical. Questions such as, Why did the state arise? Why at such a time or place? Why were its limits as to boundaries and people thus? Why its peculiar organization? Why its particular course of development and decline? cannot be answered unless those institutions and conditions whose causes are ultimately found in the physical environment, are understood.

It must further be remembered that while, for convenience, the physical basis of the state is subdivided into (1) the natural environment, and (2) the population, the connection between these two is very close. Man himself is a part of nature; and his origin, development, and distribution, his division into races, even his intellectual make-up, are powerfully influenced by his surroundings. Every state consists ultimately of a number of individuals, each having certain physical and mental characteristics, existing in certain relations with one another, and the whole existing in a certain natural environment. This environment is constantly modifying the life of both individual and group; these in turn are constantly modifying their environment; and the relation of individuals to one another modifies both the individual and the group. It is obviously impossible to discuss adequately within the scope of a single chapter the importance of these elementary factors of state development, but a few facts and illustrations may serve to indicate the enormous influence that physical conditions exert.

10. Elements of the physical environment. The natural environment includes the sum total of all those influences of the external world that affect the life of the individual or of the social group. Its subdivisions may be roughly stated as follows: —

1. The contour of the earth's surface
2. Climate
3. Resources
4. The general aspects of nature

These form the background of all human existence and constantly condition all human institutions. In the early life of mankind points of contact with nature were few, and dependence on natural conditions was almost complete. Growth of intelligence brought man into contact with nature at an increasing number of

points, and at the same time extended his control over nature until he became the master rather than the slave of his environment. Even the wonderful advances of modern science, however, are but feeble beginnings of man's control of the physical environment, and the most advanced modern state is powerfully affected by natural conditions with which the skill of man is still unable to cope. A few illustrations under each of the above heads will indicate their importance in past and present political existence.

11. Contour of the earth's surface. The contour of the earth's surface includes the arrangement of land and water areas, the size and position of mountains and rivers, the extent and altitude of land divisions. It gives, in short, an earth divided by nature into a number of land units of various sizes and of various internal formations, separated from one another by broad water or high mountain barriers, or joined by river systems or valleys. Sometimes these units are distinct, with natural boundaries on all sides, as in the case of Spain, Italy, or the British Isles, although these differ as to internal unity. Sometimes the natural boundaries are indistinct or broken in places, as in the case of the Russian plain or the Mississippi valley. Such physical conditions influence state existence in many ways:

1. *The size of the state.* Other things being equal, the areas of states tend to coincide with these geographic units. Natural barriers protect the people living within them from contact with other peoples, and develop those common interests and that consciousness of unity which lie at the basis of a state. It was no accident that great empires grew up in the Nile and in the Euphrates valleys; that the Russian plain, the Chinese river valleys, and the basin of the Mississippi are the seats of extended states at the present day. Aside from the effects of favorable climate and fertile soil, a vast extent of unbroken area encourages the formation of a state with great territorial expanse. On the contrary, nature formed Greece and Switzerland to be the homes of small, distinct units, and Europe as a whole is adapted to a number of states of comparatively equal size. All attempts to maintain world empire in Europe have failed, in spite of the genius of Cæsar, Charlemagne, and Napoleon.

The efforts of man may, of course, modify the influence which the contour of the earth's surface would otherwise exert on the area of states. The maintenance for several centuries of Roman legions along the Rhine frontier served the same purpose as an impenetrable mountain barrier, and helps to explain the present separation between France and Germany. On the other hand, the engineering skill of man and the development of transportation may enable a single state to include several geographic unities, — as the expansion of the United States bears witness.

The mere question of size exercises considerable influence on state development. It was the expansion of Rome that checked her democratic tendencies and caused a reaction towards the centralized despotism of the Empire; and it is the territorial growth of modern democracies that has necessitated the present highly developed forms of representative government.

2. *The isolation of the state.* The configuration of the earth determines in large degree whether a state shall develop apart from external influences, or whether it shall constantly have peaceful or warlike relations with other states. The Rhine boundary, the weak spot in the frontiers of France and Germany, has been the bone of contention between them, and the battle field of Europe. Greece, with her excellent harbors and her coast fringed with islands, was naturally led to intercourse, trade, and colonization. Spain and England, both cut off by natural boundaries from neighboring states, worked out their political institutions with little interference, and each developed commerce, a navy, and a colonial empire.

What a state gains in the way of protection by a natural frontier is partly offset by the danger of provincialism and internal stagnation, and, in case of water boundaries, by the dependence upon naval strength to maintain external relations. The fall of Spain was due both to her internal narrowness and to the loss of her colonies as a result of naval decline. England, comparatively safe from invasion, must maintain a powerful navy to avoid a similar fate. The body of water that separates Ireland from the remainder of the British Isles is largely responsible for the differences in nationality and religion, and for the feeling of hostility against England that the Irish retain. The existence of mountains in

Wales and Scotland has somewhat similar effects upon the unity of Great Britain.

The arrangement of land and water areas largely determines the commercial importance of a state. When the Nile and the Euphrates valleys were the seats of empire, Phœnicia, the middle country, facing the Mediterranean, was the great commercial power. As civilization shifted westward and surrounded the Mediterranean, Greece and Rome in turn held the strategic position. The discovery of the New World and the growing importance of the Atlantic gave Spain, Holland, and England advantages of geographic location; while present conditions, in the opening up of Pacific lands, find the United States, facing on both oceans, in an enviable position.

3. *The direction of external activity.* Social as well as physical movements tend to follow lines of least resistance, the arrangement of mountains, rivers, and seas determining in the main the trend of migration and of conquest. Greece, with her chief mountain system on the west, and with good harbors and numerous islands on the east, naturally came first into contact with Oriental peoples. Rome, facing in the opposite direction, had early relations with Carthage and with the Gauls and other barbarians to the west; while not until late in her development did she come into contact with Greece, with whom she stood, as it were, back to back. As a result, Greece, compelled at first to wage defensive wars against older civilizations, was thrown back upon herself and developed an internal life of remarkable energy; Rome, thrown into relations with inferior peoples, naturally began her career of external conquest that resulted in world-wide dominion and an imperial form of government.

River valleys have always formed the easiest means of access to new lands; and mountains, the greatest barriers. The St. Lawrence and Mississippi invited the French traders and missionaries to scattered settlements; while the Appalachian Mountains restricted the English colonists to a narrow strip of coast for over a century. The resultant spirit of unity and of common interests among the English colonists was manifested later. Besides, it was no accident that the final clash between English and French in

America should occur over the possession of the headwaters of the Ohio, one of the natural entrances into the western lands. The early migrations of peoples, the colonization of newly discovered areas, and the immigration of recent times have all followed natural lines of movement. Civilization and culture as well as war and conquest expand in the directions where natural barriers least prevent social intercourse. In ancient times physical features determined the trails of savages and the routes of caravans; in modern times the location of cities and the direction and nature of facilities for communication, travel, transportation, and trade have been fundamentally affected by geographic contour.

12. Climate. Climate, referring especially to natural conditions of light, heat, and moisture, affects the individuals that compose a state, rather than the state as a unit. It is, however, difficult to separate its influence from that of fertility of soil and resultant vegetable and animal resources, which affect the group as well as the individual. In general it may be said that climatic extremes of any kind interfere with the higher forms of state existence. The dazzling brilliancy of reflected light from arctic snows or tropical deserts, the long nights of the polar regions, the extreme cold, which checks vigorous growth, the extreme heat, which enervates, the malarial marshes of rainy regions, the parched lands of rainless areas, — all these make existence difficult, and organized political life possible only in its undeveloped forms. All great states have arisen in areas where a temperate climate is combined with a moderate amount of moisture. While the earliest states emerged in a comparatively warm climate, where the bounty of nature furnished food in abundance and gave leisure for social development, the highest forms of state life arose in those cooler climates that stimulated energy, resulting in continuous progress.

It is a notable fact in history that upland dwellers have been conquerors; and the influence of rare, dry air, developing lung capacity and vigor, is at least a partial explanation. Likewise, greater atmospheric clearness and wider variations in temperature help to account for the more nervous, energetic type of man that the Anglo-Saxon becomes in America. The effect of climate on birth rate and on the age of maturity influences the state indirectly,

and it has even been claimed that the type of crime differs in warm and in cold countries. In the former, where population is dense and the contact of man with man is consequently great, crime takes the form of offenses against the person, — murder, assault, rape; in colder climates, where sparser population brings man less in touch with his fellows, and where the means of overcoming nature are more important, crime takes chiefly the form of offenses against property, — theft, gambling, and drunkenness being common. As a result different ideas of morality, influenced somewhat at least by climate, will prevail; and these in turn will affect the laws and the organization of the state. While it is of course easy to push such reasoning to extremes, the truth remains that political existence, as one of the forms of social activity, is modified by every phase of the physical environment in which that activity takes place.

13. Resources. Natural products which man may apply directly to his wants are powerful factors in state development.

1. *Mineral resources.* These were so important in the early stages of civilization that the terms "stone age," "bronze age," "iron age," are often used to characterize certain forms of culture. From the standpoint of political life, those peoples who were armed with weapons of bronze or iron had enormous advantages over tribes that retained cruder implements of wood and stone; and the conquests which naturally followed, necessitating closer organization and some form of rules to determine the relation of conqueror to conquered, were powerful motives in the rise of government and law. Later, when gold and silver had become standards of value, the possession of these metals was eagerly sought. Desire for plunder has been at the basis of many wars that have made or unmade states; search for gold underlay much of the early conquest and colonization in the New World; and the preëminence of Spain in European affairs during the sixteenth century was largely due to the power brought her by the wealth of Mexico and Peru. In the modern industrial age deposits of coal and iron are essential, and those states fortunate enough to possess large quantities of these minerals, easy of access, have enormous advantage.

2. *Vegetable resources.* The earliest states arose where nature furnished food in abundance. There population became comparatively dense and stable, and contact of man with man developed civilization and made political authority necessary. Rice, grains, and the palm tree in the Old World, Indian corn and the banana in the New World, formed the basis of existence at a time when man was dependent upon nature for sustenance. The great empires of Egypt, China, Babylon, and India, of Mexico and Peru, grew up in natural granaries. The less fertile soil of Greece compelled her to depend more and more upon commerce for her food supply; and her chief products, wine and olive oil, commodities of large value in small bulk, thus serving as a means of exchange, facilitated such intercourse. The situation of the British Isles in the modern world is very similar.

Pressure of population on the means of subsistence is at the basis of the migrations of early peoples, of the colonization of new lands as they were discovered, and of the immigration of the present day. The thin soil of New England and the abundance of timber naturally turned her to ship building and trade; as cotton became king in the South, the institution of negro slavery was firmly fixed. Thus the American Revolution and the Civil War can be partially explained on the basis of vegetation. The struggle for the Spice Islands was the key to much European history in the sixteenth and seventeenth centuries; while more recently the sugar situation in Cuba paved the way for our war with Spain and led indirectly to territorial expansion and imperialism.

3. *Animal resources.* The presence of game was an important factor in early development, and upon whether this game was large and dangerous, or small and timid, depended the amount of co-operation required, and thus, indirectly, the form of social organization. Where the horse, the cow, and the sheep existed, the transition from the hunting to the pastoral stage of economic development was possible; and this fact serves as at least a partial explanation of the advanced civilizations found at a comparatively early period in Asia and Europe. Domestication of animals marked a long stride toward permanent food supply and stable organization; and, as it created a form of wealth, it necessitated some kind of

property regulation. Absence of animals suitable for domestication and for beasts of burden helps to explain the comparative backwardness of civilization among the American Indians and among the aborigines of Australia. Abundance of fish played an important part in the formation of the Hanseatic League, the rise of the Netherlands, and the development of New England; while the fur-bearing animals of North America determined the French type of colonization. The part that the horse played in medieval feudalism has seldom been adequately appreciated, and the development of sheep raising in England during the sixteenth century hastened the fundamental changes in social organization that marked the rise of modern democracy.

14. General aspects of nature. Buckle has pointed out[1] that the type of man and of society is influenced by the general aspects of nature. In some parts of the earth man is surrounded by nature in violent and terrible aspects; earthquakes, volcanoes, hurricanes, avalanches, great mountains, vast deserts, mighty rivers, form the background for human life. Under these conditions, which appeal to man's imagination rather than to his reason, man fears nature; he hesitates to investigate and experiment; he lacks self-reliance; his religion becomes superstitious; his art, monstrous; his organization, despotic. The course of civilization in India and in Peru may serve as examples. On the other hand, certain parts of the earth are planned on a smaller and more quiet scale. No awful phenomena hold man in terror, and the mastery of man over natural forces progresses rapidly. In such circumstances moderation, individualism, and reason develop; art becomes beautiful; religion, rational; and the state, democratic. Such conditions ancient Greece and modern Europe exhibit.

15. Changes in environment. While individual and state are thus influenced by the physical environment the subordination is not complete. The distinguishing feature of man is his ability to modify his environment; and with the growth of intelligence comes the mastery of man over natural forces, and the creation of more favorable conditions. Bridges and tunnels decrease the importance of natural boundaries; forestry and irrigation modify the

[1] History of Civilization in England, Vol. I, chap. ii.

climate. The draining of swamps, as in England or Holland, and the irrigation of arid lands, as in Egypt or western United States, cannot fail to influence the life of the state there existing. By proper care the quality of the soil may be completely changed; fauna and flora may be made to flourish in parts of the world remote from their original homes; and, by cultivation and breeding, the value of species may be wonderfully increased.

Almost all the arts and inventions that mark the progress of civilization are steps toward the control of the natural environment. By conquering nature, the constant fear of unknown danger and the uncertainty of food supply are removed, and man attains security and leisure, both of which are necessary for progress. By the use of weapons and tools man increases his natural strength and dexterity; clothing and artificial shelter enable him to withstand extreme climatic changes; and the use of fire gives him warmth and light, better prepared food, the means of working minerals, and, finally, artificial power. Building upon the crude guesses of the earlier alchemist, the modern chemist analyzes the materials of which the earth is composed, and recombines them for the convenience of mankind. Even the complex machinery of the present day, which performs intricate processes and is almost human in its uncanny intelligence, is but the logical result of that development, begun ages ago by primitive men, by means of which natural forces are utilized and natural laws applied for human benefit.

The development of transportation is probably the most important means by which man has conquered nature. The growth of commerce and travel, the methods which make possible the transfer of commodities and persons, rapidly and cheaply, from place to place, are breaking down man's dependence upon geographic location; and the rise and fall of cities and of states are largely determined by the lines of railways, canals, and ocean traffic. Transmission of power, a result of the development of transportation, has far-reaching effects. Not only may coal, wood, and oil be used as fuel, where conditions are favorable for human labor, but human labor itself may be transported to places where natural conditions are more advantageous. Recent developments in the transmission of electric power tend to make location of even less

importance. Finally, the transmission of information further reduces the importance of natural influences. Telegraph, telephone, the mail service, coöperate in binding the earth into a unity and in making knowledge international. While nature still places certain limitations upon the activities of man, the progress of civilization is widening those limits and making it more possible for man consciously to direct his own development and the form of his institutions.

OUTLINE OF CHAPTER IV

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- Growth of Population
  1. birth rate
  2. death rate
- Distribution of Population
  1. migration
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- Race
  1. influence on motive of state-forming
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- Nationality
  1. effect of religion
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- Political Genius of Various Nations
  1. semitic
  2. greek and slavic
  3. celtic
  4. roman
  5. teutonic
- Importance of the Individual
- Conclusions
  1. the relation of geographic and ethnic unity to the state
  2. the preëminence of the teutons

CHAPTER IV

POPULATION OF THE STATE

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16. Importance of population. The physical environment of itself can accomplish no historical result. It acts always upon or through individuals, determining their characteristics and conditioning their activities. Hence a study of the fundamental elements of the state must include the individuals that comprise it as well as the circumstances in which it exists. The internal influence of heredity must be added to the external influence of environment; and the results of contact of man with man, as well as of man with nature, must be considered. Just as political science views the earth as divided into a number of geographic units, differing among themselves and tending with more or less definiteness to divide mankind into separate groups, — so political science views mankind as divided into a number of ethnic units, differing among themselves and tending more or less powerfully towards that spirit of unity which creates a state. The influences of natural environment partly explain the origin and development of states; the influences resulting from characteristics of individuals and groups of individuals complete the explanation. Nature and man in constant interrelation create the state.

17. Growth of population. The growth of population as a whole depends upon the excess of births over deaths, and therefore is modified by any causes that increase or diminish either birth rate or death rate. Among early peoples the birth rate was high, but a comparatively small increase in population resulted because of the correspondingly high death rate. Disease, famine, war, and at times the deliberate removal of surplus children or useless aged resulted in an enormous waste of life. The growth of civilization has been accompanied by a declining birth rate. For this two important reasons have been offered:

1. The biological fact that the powers of reproduction decrease as animal life becomes more complex and highly organized;

2. The sociological fact that deliberate prevention increases in older and wealthier civilizations. Marriages are fewer and later, and families smaller.

On the basis of the above facts it is evident that population is constantly being recruited from peoples of lower civilization, and from the lower classes among these peoples.

At the same time the progress of civilization is accompanied by a declining death rate. Improvements in sanitation check disease; a more highly developed economic life prevents famine; war becomes the exception rather than the rule; and society cares for its weak instead of destroying them. Thus, in spite of a declining birth rate, population may increase rapidly and the waste of human life be avoided. Among the advanced peoples, other things being equal, the death rate will be lower. The following table, based on official reports (1910–1911), shows the annual birth and death rates per thousand, with the resultant increase in population, in leading modern states:

	Birth Rate	Death Rate	Increase
United States [1]	33	18	15
Russia	44	31	13
Austria	32	22	10
Japan	34	21	13
Germany	30	18	12
England	25	16	9

[1] Estimated. There is no complete national registration of births and deaths in the United States.

Hungary	35	25	10
Italy	30	22	8
Spain	33	24	9
Switzerland	25	16	9
France	19	19	0

The importance of mere increase in population on the rise and development of the state is enormous. In primitive times increasing numbers caused increasing contact, necessitating organization and authority. Later, pressure on the food supply led to migrations and conquests. At present the size of population affects both industrial and military strength. From the early Spartans, who bred warriors as one breeds cattle, to modern France, bewailing her stationary population, the question of numbers has been of importance in political affairs.

18. Distribution of population. More important for political science than the mere growth of population, which results from excess of births over deaths, is the distribution of this population over the earth. Here again the physical environment is a determining factor. Certain areas, because of their configuration, climate, or resources, are adapted to sustain large populations. It is evident that the size of the group will depend not only upon the external environment but also upon the use made of it by man. A given area, capable of supporting but a small group in the hunting stage, may maintain a larger number if they are engaged in agriculture, or an infinitely larger number when industry and commerce have developed. In these favored localities the excess of births over deaths will be greatest, and the size and density of the population will be further increased by peoples attracted thither by the superior advantages which such areas offer. Thus, both the rate of increase within the group, and the accessions which groups receive as a result of movements of peoples, determine the distribution of population.

These migrations are of particular importance, since, because of intermarriage and the influence of new environment, variations result which make for progress; and because such movements have been powerful influences on the origin and growth of state, of government, and of law. Sometimes the original inhabitants are

exterminated or enslaved; sometimes they are driven to seek homes in less favorable sections. The great migrations of early peoples, the periods of colonization that follow the opening up of new lands, and the modern immigration movement are examples of such distribution of population.

A survey of man at any given time, therefore, shows population sparsely scattered in some places, compactly congregated in others. In general, large populations will be the more highly developed. Their control over nature makes it possible to maintain a dense population, and their greater skill in warfare or in organization enables them to drive out or to rule over inferior peoples. The importance of distribution of population in its relation to the state can scarcely be overestimated. Aggregation of population in favored areas leads to those common interests, to that contact of man with his fellows, that results in a spirit of unity and a need for organization. Migrations and the conquests that accompany them require closer organization than a stationary life demands, and lead to some form of regulation between ruler and subject, and between one group and another. The opening up of new lands creates colonies and colonial government; the redistribution of population within a state, as industrial life develops, leads to the important governmental problems that modern cities present. The movements of peoples that destroyed the Roman Empire and laid the basis for modern European states, the establishment of the American colonies, and the result of immigration on the internal political life of the United States are examples sufficiently suggestive to show the relation between distribution of population and state development.

The following table gives the number of inhabitants per square mile in leading modern states, in 1910–1911:

Belgium	652	Austria	247
England	618	Switzerland	234
Netherlands	475	France	189
Japan	336	Spain	100
Italy	313	Russia	69
Germany	310	United States	31
China	266		

19. Race. Even a casual glance at individuals shows certain physical similarities and differences. Some of these are personal peculiarities and perish with the individual; others are persistent and fundamental. On the basis of physical make-up, the population of the earth may be classified according to race. Race similarity seems to be the outcome of both heredity and environment, but just how much is due to each it is difficult to determine. People living in the same general areas under similar conditions of climate, food, and occupation develop certain common physical characteristics. These traits are handed down from parent to child and thus perpetuated. Naturally, people of the same original parentage, who remain under the same natural conditions, become racially similar, while intermarriage or change of environment modifies the race type.

The existence of races influences state formation particularly in two respects:

1. *As to motive.* Descendants of the same ancestors, similar in physical make-up and in mental characteristics, develop a feeling of unity that makes political organization easy and natural. The feeling of race supremacy has been a powerful and constant social phenomenon. In early times stranger and enemy were identical, and only to people of the same tribe were obligations of morality or justice acknowledged. Race unity was essential to the formation of the earliest states.

2. *As to method.* On the basis of kinship, which underlies race formation, the family developed. In its expanded forms, the clan and tribe, a more concentrated race spirit created greater unity and a more rigid form of organization arose. The state was, in many cases, the ultimate outgrowth of this organization. Thus, in the beginning of political existence, racial conditions made the state possible, and furnished the framework of its earliest organization. Races differ widely in their political ability. All great states that have influenced modern civilization have been created by various branches of the white race; yellow and black peoples have as yet manifested little political genius.

20. Nationality. In the early development of the state, races formed the fundamental divisions of population; and heredity

created the feeling of unity that made political life possible, and furnished the organization from which the state arose. More recently these factors have become of little importance to political science. No modern state coincides with a race. The lines of demarkation that separate races are growing less distinct as peoples more easily migrate and intermarry ; and ties other than those of remote kinship unite modern states. The influences of heredity and environment remain, but to these physical ties are added social bonds that result from the contact of man with man. Secondary groups, called nations, emerge, united by a common spirit, by common customs and interests, and on this basis modern states have arisen.

Among the forces binding mankind into nations may be mentioned :[1]

1. *Religion.* In ancient and medieval times common religious beliefs were powerful bonds of union. Unbelievers were treated as foreigners, and even common descent was sacrificed if it conflicted with religious ideas. The permanence of the Hebrew nation, the rise of the Mohammedan empire, the wars of the sixteenth century, — all showed a fundamental religious basis ; and states considered religious unity a necessary condition for their own existence. The growth of tolerance and freedom of belief have tended to weaken this force ; and nations, such as the modern Germans, in spite of religious differences, have become conscious of their unity.

2. *Language.* Common language is a powerful influence on national unity. People whose interests are similar develop a common speech, and those whose speech is not understood are regarded as strangers. By constant use a national language keeps awake the feeling of unity, and with the growth of literature and the press comes that community of thought and culture necessary for national existence.

3. *Community of interests.* People living in the same area, whose occupations, manner of life, and customs are similar, and who have common ideas of right and wrong, and common history and traditions resulting from past political union, rapidly develop a national spirit. Most modern nations have arisen under such

[1] Bluntschli, The Theory of the State, pp. 87–89.

conditions. These forces, increasing in importance, have modified the earlier groups based mainly upon physical characteristics.

At the beginning of state development, Semites, Greeks, Romans, Slavs, Celts, and Teutons were more or less distinct peoples, and at present English, French, Spanish, German, and other nations are separated by differences more purely psychological. Race and religion are of decreasing importance, but language, community of interests, and common ethical standards still form powerful national bonds. Hence, as a survey of the surface of the earth shows it to be divided by nature into a number of various geographic units, so a survey of the population of the earth shows its division into a number of various ethnic units; and from the standpoint of both territory and population a natural basis for the state exists.

21. Political genius of various nations. The fact that, from the standpoint of population, states tend to develop on the basis of nationality makes a study of the political psychology of nations valuable. Without attempting to explain the reasons for differences in political ability, and remembering that the political characteristics of the same nation may vary at different periods of its development, the fact remains that each of the leading nationalities composing modern states has developed a peculiar form of political organization.[1] The peoples that have played an active part in the progress of modern civilization may be divided roughly into the following nations: Semites, Greeks, Romans, Slavs, Celts, and Teutons. Of these the Romans and Teutons alone have shown political genius.

1. The great contribution of the Semitic peoples has been in religion. Judaism, Christianity, and Mohammedanism have been their work; but they have never developed a great state. In spite of a national unity, which they have maintained for several thousand years; in spite of their bravery and enthusiasm in following an ideal, as the Mohammedan movement showed; in spite of intellectual keenness, which their position in modern trade and finance indicates, they have seldom been independent and never united.

[1] Burgess, Political Science and Constitutional Law, Vol. I, pp. 30–39.

2. The political genius of the Greek and of the Slav seems to have been exhausted in the organization of small units, the village community, the city state. While it is possible to have a highly developed civic life on a small scale, and while such a condition may be favorable for progress in other lines, its great failing lies in the constant quarrels among the various units and in their weakness when exposed to external danger. Greece was not united until she was brought under the external sway of Macedon or of Rome; and more recently the Turk and the Teuton have controlled her destiny. The Slavic population of Russia has been organized by a ruling dynasty of Teutons; and those who urge self-government for the Russian people should remember that the political ability of the Slav has shown as yet little indication of improvement.

3. The organization of the Celts has always taken the form of the clan, based upon personal allegiance to some chieftain. Grouped into small military states, among which civil strife was the usual condition, and within each of which, government, marked by violence and corruption, was used for personal advantage, the Celts have invariably fallen an easy prey to better organized nations. The very qualities that prevent the organization of a Celtic state, however, are the ones that make the Celt a power in the machine politics of a state organized by a nation of greater political ability; and it is therefore not without significance that the Irish, unable to govern themselves, can come to America and govern us.

4. From the beginning the Roman nation showed great political ability, and with the extension of territory, resulting from its skill in arms, went a corresponding development in government and law. World empire was the logical result of this system,—vast in area, centralized in organization, and uniform in law. The idea of sovereignty and a system of government that secured unity and authority were their contributions to politics. Serious objections, however, may be urged against such a system. Centralization tends to destroy individual liberty, local self-government, and the education that results from sharing in political affairs. The establishment of unity destroys those ethnic differences that cause variation, conflict, and progress. The Roman ideal tends to stagnation followed by internal decline; it sacrifices liberty to sovereignty and progress

to uniformity. In perfecting her political contribution Rome made more inevitable her ultimate fall.

5. The Teutons brought into the Roman Empire ideas of individual liberty, of popular assemblies, of elected officials, of local self-government. Contact with Roman institutions made them familiar with the unity and organization that they lacked, and the resultant fusion enabled them to develop a system that combined liberty and authority, local self-government and unity, democracy and extended area. The principle of representation and the national state are the work of Teutons, and to-day they rule the world. The national state takes into consideration geographic and ethnic unity, thus having a natural basis. It combines the local self-government of the Greek city state with the unity of the Roman world empire; the democracy of the smallest community with the sovereignty of the greatest. Upon this basis of national states have developed the external rules that regulate the dealings of states with one another, and the internal organization that reconciles the relation of state to individual.

It is not surprising, therefore, that Greeks, Slavs, and Celts now form parts of Teutonic states or are ruled by Teutonic dynasties, and that even Romance nations have been organized on the basis of the Teutonic national idea. At the same time Teutonic peoples are creating colonies in all parts of the earth, enforcing their civilization and political methods upon inferior peoples. The superior political genius of the Teutons is a powerful argument for imperialism.

22. Importance of the individual. A discussion of population that views it only as composed of a number of races and nationalities, differing in political ability and tending to form states along certain lines, gives but a one-sided view. Population also consists of individuals, of great men, leaders and reformers. Just how much of political development is due to the spirit of the time that results from general causes, and how much is due to the conscious efforts of individuals, is one of the most difficult of problems; and historians have held widely divergent opinions concerning it. To some, all progress is the work of great men; to others, the individual is helpless unless the world is ready for him. As usual, the

truth seems to lie between the extremes. Great individuals are both causes and effects. A Cæsar or a Napoleon plays a mighty part, but at the same time conditions are such as to produce these men and make their work possible. All great leaders are largely representative of their age; yet they may modify it and introduce new ideas that may form the basis of succeeding development. After all, each individual composing the state is a being that wills and acts; and while at any given time it may be impossible to distinguish between the crank and the reformer, between the man who is opposing the tendency of his times and the man who is starting a new movement towards a new age, in either case the individual is a force that demands consideration.

Just as man may consciously modify the physical conditions of the external world, so may he influence those psychical bonds that create nations and states; and as the control of man over nature makes progress rapid in material civilization, so the conscious effort of man to modify his political system makes possible the revolutions and reforms that mark the path of state development.

23. Conclusions. The preceding discussion of the physical environment and of the population, the raw material of which states are formed, leads to several important conclusions.[1]

1. *The relation of geographic and ethnic unity to the state.* Modern states have developed on the basis of a homogeneous population inhabiting a territory with definite natural boundaries. It is therefore the duty of each state to improve or perfect both the geographic unity of its territory and the national unity of its population. If several states are included in one geographic unity, unless ethnic differences prevent, it would seem wise that they combine into a single state, either by the absorption of the weaker by the stronger, or, if nearly equal in importance, by federation. If one state covers several geographic units, it is in serious danger, should national differences coincide with the natural divisions. If, however, the population is homogeneous, modern improvements in transportation prevent natural barriers from proving fatal. Where one state includes several nationalities, it is the duty of the state to

[1] Burgess, Political Science and Constitutional Law, Vol. I. pp. 40–48.

make strong efforts to secure national unity. A corollary of this is a powerful argument against promiscuous immigration.

2. *The preëminence of the Teutons.* Of all nations the Teutons have manifested, perhaps, the greatest political ability. The national state is their work; they are the most successful colonizing peoples; they are spreading their languages, ideas, and institutions in all parts of the earth. The Latin nations still point with pride to their culture. The Slavs are developing a national spirit, and have been remarkably successful in dealing with Oriental peoples. Japan has assimilated western ideas and taken her place among the family of nations. The Teutons alone, however, find their internal problems in a fairly satisfactory condition, and have energy for external activity; and the best interests of mankind demand that, in the presence of inferior peoples, political authority remain in their hands. No maudlin sentiment regarding the equality of man should endanger their control of the internal organization of modern states. No hazy ideas concerning the rights of man should prevent them from governing, and, if possible, educating in political methods, less advanced peoples. As long as inferior peoples exist, the Teutonic states must have colonial policies; history and political science do not admit any "right to barbarism."

OUTLINE OF CHAPTER V

REFERENCES

FORCES IN STATE-BUILDING

1. KINSHIP
2. RELIGION
3. NEED FOR ORDER AND PROTECTION

KINSHIP

RELIGION

1. ANCESTOR WORSHIP
2. NATURE WORSHIP

NEED FOR ORDER AND PROTECTION

1. FOR PERSONS
2. FOR PROPERTY

EMERGENCE OF THE STATE

STAGNATION AND PROGRESS

CHAPTER V

ORIGIN OF THE STATE

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24. Forces in state-building. The foregoing discussion of physical environment and population contains many hints as to the beginnings of political life. It now remains to consider more definitely the manner in which the state came into being. The origin of the state is difficult to discover. Like other social institutions, the state arose from many sources and under various conditions, and it emerged almost imperceptibly. No clear-cut division can be made between earlier forms of social organization that are not states and later forms that are states, the one shading off gradually into the other. However, it is possible to indicate the chief influences that have created the state, and to outline in general its distinguishing features.

Aside from those influences of the physical environment that cause mankind to aggregate in certain places, that separate one group from another, and that create ethnic ties among the

individuals of the groups, thus paving the way for state formation, the following are among the chief forces in state-building:

1. Kinship
2. Religion
3. Need for order and protection

Each of these, as will be seen, tends to create that unity and organization which the state requires; and the existence, usually, of all these forces in early social groups explains both the reasons for state origin and the form in which it first emerged.

25. Kinship. What is known of the early history of mankind indicates that social organization had its origin in kinship. Not individuals, but tribes or groups of men, who considered themselves of the same blood, formed the units. The original bond of union and the original sanction for authority were based upon real or pretended blood relationship. Whether the patriarchal family was the original form, or whether it was gradually developed as the result of a slow evolution from an earlier state of promiscuity, through various stages of family relationship, is a question much disputed. With this dispute, however, political science is little concerned. It is sufficient to know that some form of family life and some tie of kinship have preceded organized political life, and that those peoples who have contributed to modern political ideas and created modern states were organized on the basis of the patriarchal family; and, from this as a model, developed the authority and organization of the state.

The patriarchal family consisted of the father, his wife or wives, his unmarried daughters, his sons with their wives and families, together with the slaves and other property. Descent was traced through a direct male line to a common male ancestor, and the authority over persons and property was vested in the oldest living male. This authority was absolute, and the sons, even though married and with families of their own, had no rights except of the father's granting. The property and even the lives of the family were at his disposal. Combined families formed a *gens*, or clan, over which a chief kinsman ruled. A still wider group of clans formed a tribe, composed of those who traced descent to a

common ancestor, and ruled over by a chief, who united military, judicial, and religious authority. While in actual historic development it is probable that the tribe was the original unit, and that, as relationship and family ideas became more definite, it split up into clans and families, — at any rate, its final organization as it approached political form was based upon the patriarchal family. As the tribe widened the idea of kinship remained, and the fiction of adoption was necessary to admit those whose blood relationship was not direct. Thus a feeling of unity arose, and common interests and a common tradition created that solidarity which is necessary for political life. The fact that, in early states, rights and obligations were respected only among people of the same blood, and that strangers were necessarily enemies, shows the strength of this feeling. The same general idea underlies the haughty race pride of early peoples, and their scorn of aliens. The children of Abraham considered themselves God's chosen people, — all others were Gentiles; while to the Greeks all non-Greeks were barbarians. A modified form of this spirit still survives, and is one of the characteristic features of modern national states.

The patriarchal family also furnished the organization for the primitive state. In the authority of the chief or king were again found the religious and judicial powers of the father; and the leaders of the various clans reappeared in an advisory body or senate. The discipline of the family permeated the entire organization; a clear distinction was drawn between rulers and subjects, and between citizens and noncitizens. Long-standing customs and the decisions of the chief and his advisers formed law. Kinship, therefore, furnished both the spirit of unity that made the state possible, and the organization of its first government. The state grew out of the family, and its functions were those of a combined group of kinsmen.

Several fundamental differences distinguish the patriarchal organization from modern society:[1]

1. *It was personal, not territorial.* Membership in the community was based on blood rather than on residence. The whole

[1] Jenks, History of Politics, p. 20.

group might migrate without affecting its organization, as law and jurisdiction went with persons, not with territory. Early kings were kings of their people, not of their land.

2. *It was exclusive.* Strangers could be admitted only by adoption or as slaves. Wholesale admission of aliens, as permitted by modern states, would have been inconceivable.

3. *It was communal.* In modern states authority deals with individuals; in patriarchal society it dealt with groups. Each man was responsible only to the head of his own family, these men to the heads of their *gentes*, and these in turn to the tribal chief.

4. *It was noncompetitive.* Life, even in its details, was regulated by custom. The idea of change or of progress was looked upon with disfavor.

Naturally, survivals of patriarchal ideas long existed even after the state was well developed. Feudalism, the transition between patriarchal and modern political organization, in its relation of lord and vassal, its life on the manor, and its guilds, shows clearly the same general ideals.

26. Religion. Closely connected with kinship as a force in state-building stands religion. Early man, surrounded by phenomena that his limited intelligence could not understand, interpreted them as manifestations of supernatural beings, whose wrath must be averted or help secured by acts of worship. The chief mysteries were man himself and the external world. Sleep, dreams, insanity, death, — all the psychological problems, which even to-day are little understood, were vastly more wonderful to primitive man. Likewise natural phenomena, such as storms with their thunder and lightning, clouds and wind, the sun, moon, and stars, rivers and the sea, the changing seasons and the birth and death of vegetation, — all these, explained by modern science, were wonderful manifestations of supernatural beings. Such conditions led to two forms of religion, combined in various proportions among all early peoples, — worship of ancestors and worship of nature. Every man was accompanied by his other self, or spirit, which, after death, remained near his body and demanded sacrifices and ceremonies lest it become an evil demon. The spirit of the powerful patriarch was chiefly worshiped. Nature also was personified

and grouped into a family of deities around whom abundant traditions and myths were formed.

Each of these worships played a large part in early social life, ancestor worship in particular strengthening the family organization from which the state emerged. Tribal solidarity and the inviolability of custom and discipline were enforced by a religion common to all tribesmen, and by the authority of a long line of divine ancestors. The power of the father and of the tribal chief had the same sanction, both being agents of the gods, in line for divine worship after death. Hence the authority of the patriarch over the property, conduct, and lives of his people was strengthened by his position as high priest of a tribal religion in which outsiders were allowed no share. Kinship and religion were therefore two aspects of the same thing. Religion was "the sign and seal of the common blood, the expression of its oneness, its sanctity, its obligations." [1] The power that such ideas exerted in strengthening the unity of the tribe, the authority of its chief, and the sanctity of its customs can scarcely be appreciated to-day.

This religion, however, was more or less narrow and local. As tribes expanded by incorporation or conquest, the bonds of kinship and of ancestor worship necessarily weakened, in spite of adoption and the fiction of common origin, found in all early states. Nature worship was better adapted to large areas and diverse peoples; and its development, mingled with remnants of the old family worship, and with legends of tribal heroes, still formed a common national religion that served as a sanction for government and law. Religious and political ideas were little differentiated, and obedience to law and to authority rested largely on the belief in the divine power of the ruler and in the sacredness of immemorial institutions.

The value of religion in the evolution of the state can scarcely be overestimated. In the earliest and most difficult periods of political development religion alone could subordinate barbaric anarchy and teach reverence and obedience. Thousands of years were needed to create that discipline and submission to authority on which all government must rest, and the chief means in the early part of the process were theocracies and despotisms, based

[1] Wilson, The State, p. 15.

mainly on the supernatural sanctions of religion. The importance of religion as a force in state evolution was not limited to the earliest states alone. Its aid has been invoked every time a new people passed from barbarism to political civilization. After the invasions the Teutons organized Europe only when the aid of the Roman church was given; to this day the authority of the Japanese emperor has a religious background. Only in recent times has the theory of divine right of rulers been seriously questioned, and its shadow still lurks behind more than one throne. Long after the ties of kinship had been forgotten or merged in the general feeling of nationality, common religious beliefs were sufficient to unite peoples, to support dynasties, to create states.

27. Need for order and protection. In addition to the bonds of kinship and religion, other forces existed, which, even in the absence of these, would probably have necessitated some form of organization and authority; and which, when combined with them, made the state inevitable. No aggregation of people could long exist without some form of association, of communication, and of more or less coöperation. In those parts of the earth where population became numerous such conditions were particularly necessary. Increasing contact of man with man compelled some sort of regulation concerning personal relations, even if at first it were nothing more than the enforced subjection of the weak by the strong, or the combination of several against a common enemy. As wealth increased in the pastoral and agricultural stages, and the idea of property developed, some regulation concerning things, as well as persons, was needed. Thus, for reasons purely internal in the growth of the group, arose crude beginnings of law and government, for the purpose of maintaining a semblance of order and protection; and, as economic life advanced, more definite and authoritative regulation was demanded.

The external relations of group to group further hastened this tendency. Peaceful adoption of individuals or combination of tribes required some understanding as to the status of the individual and the mutual rights and obligations of amalgamating groups. Especially did hostile relations create political ideas. Concerted action for common defense or aggression strengthened the solidarity of

the group and increased the authority of its organization; and the result of conflict demanded regulation concerning the relation of conqueror to conquered and the division of spoil. The phrase "war begat the king" is at least a half truth, since military activity was a powerful force, both in creating the need for authority and law, and in replacing earlier family organizations by systems more purely political. Successful war leaders have become kings and nobles from times prehistoric, and the influence of warfare in creating states can be traced from remote antiquity to the establishment of Germany and Italy in the last century.

Thus, in addition to kinship and religion, which furnished powerful bonds of union and which contributed the organization from which the state usually emerged, the influence of economic and military factors must not be ignored. As soon as man rose from the earliest stages of barbarism, need for order and protection for person and property, in the relation of man to man within the group, and of group to group in peaceful and warlike contact, made some form of law, and of government to enforce that law, inevitable. Further progress in civilization demanded more definite and powerful organization, with further subdivision of governmental duties and increasing political consciousness, — in other words, the state.

28. Emergence of the state. Obviously no definite step in the history of civilization can be pointed out as the origin of the state. While a general ethnic grouping probably occurred before the state arose, and men sometimes developed an advanced type of family life before they formed political communities, yet even when family grouping was uncertain, elements of the state often appeared. Religious and political authority were for a long time not differentiated, and even when organization was comparatively highly developed, it might be for purposes of economic coöperation or temporary military need. However, the general process by which states were formed is fairly definite. It was marked by a growing separation of political ideas from those that were more broadly racial or religious. At the same time political organization became more authoritative. Its functions were subdivided and its parts became more closely interrelated. Custom, enforced by religion,

grew into law, created and enforced by governmental authority. Political consciousness developed, and patriotism, replacing declining family and religious ties, indicated the new spirit of unity.

A number of causes aided this transition. Possession of permanent abodes, due largely to the change from pastoral to agricultural life, with resultant increase in property and in population, demanded protection and adjudication which the earlier tribal system was often unable to furnish. Seldom did a tribe expand into a state without considerable mixture of peoples. Both peaceful assimilation and conquest required compromises regarding rights and duties, and emphasized the relation of the individual to the whole, rather than to his own narrow group. Especially in case of war did political aspects develop. The patriarch whose authority was formerly unquestioned, was often unfitted to lead the hosts, and a more vigorous warrior, chosen for this purpose, retained large powers if successful. Under changing conditions, decisions concerning disputed points and new rulings on questions unprovided for in tribal custom created new concepts of law and sovereignty. As the duties of government increased, authority was delegated to other officials. The council of clan chiefs became a senate with expanding powers, and gradually a group of judicial, administrative, and legislative bodies was formed.

This transition from ethnic to political organization did not take place uniformly or reach identical results. The time required for the process, and the remnants of former family and religious bonds, depended on the circumstances in which each state was formed. The organization of government, the attitude of the population to their rulers, and the relations existing among neighboring states, all varied in different times and places. The chief fact upon which emphasis must be laid is that the state is a gradual and natural historic evolution. It is neither the gift of a divine power nor the deliberate work of man. Its beginnings are lost in that shadowy past in which social institutions were unconsciously arising, and its development has followed the general laws of evolutionary growth. In the words of a modern writer, the state is "the gradual and continuous development of human society, out of a grossly imperfect beginning, through crude but improving forms

of manifestation towards a perfect and universal organization of mankind." [1]

29. Stagnation and progress. Several of the causes that created the state tended to discourage further change or growth. It is therefore not surprising that the earliest states made few permanent contributions to political ideas, and that it was only after a long and tedious evolution that the difficult problems of government approached solution. The warm climates in which social progress began were not conducive to energy ; and large populations, making labor and life of little value, minimized the importance of the individual and prevented initiative and ambition. In fact, the very conditions that were most necessary at first, became later the greatest evils. That which was most needed in the formation of the state was discipline and organization. Primitive man must subordinate his anarchic selfishness and learn obedience. Under these conditions groups with the best family systems, the strongest religious bonds, and the most rigid customs survived at the expense of more loosely organized groups. Early states arose and maintained themselves only by perfecting their discipline, by making the rule of the patriarch or chief more absolute, the sanction of religion and of custom more inviolable. Stagnation, however, is the fate of any organization that fails to adapt itself to changing conditions ; and the ideals which the infancy of political society created, formed a system of caste, of custom, of superstition, and of despotism that still controls the greater part of the world. Progress is a recent, and, in many respects, an exceptional idea. Early states, cut off from their neighbors by natural barriers or by vast distances, tended toward stagnation. Freedom from external danger led to a decadent race stock, and the lack of competition and conflict among different ideas fixed original customs the more firmly.

It has been in comparatively recent times, and in a small part of the earth only, that the fixity of primitive ideas has been replaced by the ideal of progress, and that the modern state has developed. This was made possible by the gradual spread of civilization westward and by the movements of peoples. Aside from the natural

[1] Burgess, Political Science and Constitutional Law, Vol. I, p. 59.

advantages of the new environment, mere change of scene and of conditions opened the minds and modified the customs of the newcomers in spite of themselves. The contact of tribe with tribe slowly but powerfully affected the ideas of both. New institutions were imitated by some and forced upon others. Change once begun, further change took place more rapidly. In the fermentation of ideas resulting from these movements and conquests, the way for the first time was opened for individual initiative. Under new conditions man disregarded the authority of former conventions, and success was followed by further experiment and improvement. It was by some such method that political life, as distinguished from the earlier family and religious organization, emerged. The contact of peoples, with the resultant mingling or conquest, broke down the unity of kinship; and narrow tribal religion was replaced by a belief less powerful as it became more cosmopolitan. Thus the bonds of custom that fettered Oriental states were broken by war and by new conditions of life. The idea of individual enterprise and the possibility of conscious change and reform arose, preparing the way for new forms of government and for vastly different ideas of individual liberty.

This progress has taken different forms and has proceeded with varying rapidity among different peoples. In general it has been marked by the increasing control of man over the natural environment and by the growing intellectual ability and social organization of the population. Physical ties of kinship have been replaced by psychic ties of nationality as the basis for state formation, and religious and political functions have become more definite and distinct. In this process, law and authority have taken on a human rather than a supernatural sanction; and the need for order and protection, due to the increasing complexity of economic and social life, has become the chief reason for political life. At the same time unconscious evolution has given way to purposeful action; and, after numerous costly experiments, men have learned how to extend governing authority safely over wide areas and how to entrust governing powers safely to a large proportion of the people.

In this way authority and liberty have been reconciled, and the state, no longer looked upon with dread as a tyrannous monster,

has entered upon a constantly widening sphere of usefulness. Many peoples have contributed to this progress; and modern states, building upon the foundations of the past, are still occupied in the effort to adjust political institutions to changing conditions of civilization. Even those peoples whose civilization has remained stagnant for centuries show signs of awakening, and the spirit of progress created by the western nations bids fair to secure universal acceptance.

OUTLINE OF CHAPTER VI

REFERENCES

EVOLUTION OF THE STATE

1. ORIENTAL EMPIRE
2. GREEK CITY STATE
3. ROMAN WORLD EMPIRE
4. FEUDAL STATE
5. NATIONAL STATE
    a. Absolute monarchy
    b. Democracy

THE ORIENTAL EMPIRE

THE GREEK CITY STATE

THE ROMAN WORLD EMPIRE

THE FEUDAL STATE

THE NATIONAL STATE

GENERAL FEATURES OF STATE DEVELOPMENT

1. FROM SIMPLE TO COMPLEX
2. GROWTH OF POLITICAL CONSCIOUSNESS
3. INCREASE IN AREA
4. RELATION OF STATE TO OTHER INSTITUTIONS
5. RELATION OF SOVEREIGNTY TO LIBERTY

CHAPTER VI

EVOLUTION OF THE STATE

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30. Evolution of the state. The preceding chapter, in tracing the origin of the state, found difficulty in fixing the exact time at which the state came into existence, and in separating political institutions from other closely related forms. Similar problems confront an attempt to outline its historic development. The state has not had a single origin or a continuous evolution. Various states have arisen at different times and places as a result of causes by no means uniform. These states have had widely different histories, and have worked out governmental organizations far from similar. Thus, at first glance, it seems almost as difficult to follow the state's evolution as it was to determine its origin. However, if attention is limited to those states that have contributed to modern political forms and ideas, a fairly uniform course of development may be discovered.

In broad outlines the state has evolved through the following forms:

1. Oriental empire
2. Greek city state
3. Roman world empire
4. Feudal state
5. National state
   - *a*. Absolute monarchy
   - *b*. Democracy

31. The Oriental empire. The earliest states naturally arose where population aggregated in considerable numbers and maintained permanent relations. There bonds of kinship and religion developed and the need for adjustment in the relations of man to man was greatest. Warm climate, fertile soil, and considerable area were required by primitive men to support a large population and to bring about those relations among men that demand government. Such areas, furnishing abundant food with little effort, attracted surrounding peoples and led to that conflict and intermingling which is another important source of state origin. If a map of the world be examined, it will show comparatively few places that fulfill these requirements. The greater part of the earth's surface lying in the warm zone is desert, swamp, or arid plateau; but in the eastern hemisphere several rivers pierce this belt and in their valleys all the requisites are found. It was then no accident that the earliest civilizations and the first states grew up along the Nile and the Euphrates. In the west the plateaus of Mexico and Peru held a somewhat similar position. It was probably in these areas that political organization first emerged more or less distinct from religious and family systems; and the forms of state that arose in each were, in their main features, similar.

Warm climate and easily obtained food made possible the beginnings of social life, but soon checked energy and caused stagnation. Abundant population created a large servile class, with resultant social differences, castes, and despotism. The need for controlling primitive men unused to obedience, and the connection between religion and politics, led to rigid custom, enormous priestly power, and conservative policy.

The great areas, without natural divisions, over which these states extended, caused uniformity, loose organization, and absence of local interests. The distances and deserts that separated states left them isolated. Freedom from external danger led to military weakness and to the absence of that contact which brings change and progress. All these causes combined to create vast empires, despotic and stagnant. Based on conquest, they had no real cohesion and fell apart whenever the ruling dynasty was weakened; based on fear, they represented to their peoples only the slave driver and the tax collector. Neither unity in the state nor liberty for the individual was possible under such conditions. While these great empires performed valuable service in establishing the beginnings of culture, and in familiarizing mankind with authority, they offered little hope of individual or political progress. Persia alone among Oriental states showed political ability, inaugurating in her system of satraps the only known method of successfully governing large areas before the Teutons brought representation. Even Persia, however, did little to promote a spirit of unity among her diverse peoples. Each retained its own language, customs, and religion; and the ruler of each province, virtually sovereign, was always tempted to make himself an independent king. This system, the most advanced among Oriental peoples, was perfected later by Rome.

32. The Greek city state. The only logical direction in which early civilization could spread was to the north and west. Crossing Asia Minor, the Mediterranean and Europe were reached. Here important physical differences were found. Europe is a peninsula, oceanic rather than continental. It has a climate more temperate and products more varied than the river valleys of Asia. The land is broken up into small units adapted to both intercourse and defense; while the Mediterranean, though permitting communication, made invasion from Asia difficult. Hence civilization, while arising later, reached a much higher development than in Asia, and the nature of political organization was correspondingly different.

Greece, the first part of Europe to be reached from Asia, has been called "the most European of European lands." In a little district of ten thousand square miles are found in miniature all the

characteristic features of Europe. The mountains and the sea break up this area into numerous valleys and islands, easily defended, yet, because of the sea, not isolated. In contrast to the uniformity of Asia, the variety and moderation of nature in Greece developed a different mental attitude and genius. Growing population naturally led to colonization and commerce, the wine and oil which her hillsides furnished being an excellent medium of trade. Under these conditions a new form of state was created. Patriarchal clans, bound by ties of common kinship and religion, securing permanent abodes in these small areas, formed compact units, and, clustering around some easily defended hill, built their little villages. As these units grew, sometimes by conquest, sometimes by peaceful union, ties of kinship, growing more and more fictitious, were gradually replaced by a more artificial political organization. The authority of the patriarch passed over to the king. The clan elders became a council of chiefs, and the freemen formed a folkmoot whose approval was solicited for important undertakings. Custom gave way to more definite laws, and the city state was formed.

The internal development of these city states followed, in general, a uniform course. Kings were replaced by oligarchs, who divided among themselves the religious, military, and judicial powers that the former patriarch had possessed. The selfishness and oppression of these nobles led to the rise of "tyrants," who suppressed the nobles by the aid of mercenary armies and popular support. A democracy, more or less broad, usually followed, as the people, learning their strength, removed the tyrants whose power they had made possible. Thus each city developed an intense, patriotic life, regarding neighboring cities as enemies, though allowing much liberty and large powers of government to its own citizens. But this democracy, adapted to the city state, was effective only over small areas. Its perfection intensified jealousy and prevented the formation of a national state.

Lack of unity and organization was the chief weakness of the Greek political system. Facing east, Greece came first into contact with the more advanced Oriental peoples, and was compelled to wage defensive wars. This checked expansion and compelled more

concentrated internal development. Mutual jealousy prevented any union except loose confederations, and frequent wars destroyed in turn the power of the leading cities. Greece, thus weakened, was at length united only when conquered by some outside power, such as Macedon or Rome.

In one respect the city state made an important contribution to political thought. Self-government and individual liberty had been developed, and on this basis a brilliant, if brief, civilization had arisen. The remainder of the world, however, was not yet ready for democracy, much in the way of organization and authority first being needed. This unity was secured by Macedon and Rome at the expense of democracy, and the work necessary for modern civilization destroyed the Greek contribution to politics. It was not until the Teutons grafted their individualism on Roman organization that democracy, stable over large areas, became possible.

33. The Roman world empire. The beginnings of political life in Italy were very similar to those in Greece. Natural advantages of location, climate, and resources led to increase of population, mingling of peoples, and advance in civilization. While the mass of inhabitants lived in loose tribal organizations, a number of small city states gradually arose. One of these, at first by no means the most important, was formed by the union of several tribes occupying a group of hills in the fertile plain of the Tiber. A number of causes led to the preëminence of this city. Its central position and its location at the head of navigation of the only important river were of considerable advantage. Besides, the various settlements on neighboring hills soon compelled isolation to yield to federation or conquest, and numerous hostile neighbors kept alive warlike ability and compelled fusion of peoples. Thus in Rome the rigid fetters of custom were broken earlier than usual; and necessary compromise and treaty, resulting from the relations of various tribes, started the growth of Rome's wonderful system of law, and the work of conquest began that was finally to create the Empire.

The early internal development of Rome showed the same tendencies as the Greek city states. King, council, and assembly grew out of the patriarchal family organization; monarchy was replaced by aristocracy, as consuls, prætors, and senate replaced

the king; and a strong movement toward democracy was indicated by the widening of the assemblies and the increased privileges of the plebeians. Before this tendency toward a more or less democratic, compact city state could be carried to its logical conclusion, as had been done in Athens, a new series of events changed the whole course of Roman development, resulting in a new type of state and in several important contributions to political ideas.

Geographic conditions in the main account for the difference in the trend of Greek and Roman politics. Italy is better adapted for internal unity than Greece. The divisions are larger and less distinct, the plains and uplands better suited to agriculture and grazing, and the absence of harbors and islands offers fewer advantages for commerce. Hence, while civilization came later, energy was kept at home until Italy was united into a single state under Rome's headship. The direction of external effort further affected Rome's political progress. With the Apennines near the eastern coast, and the fertile plains, rivers, and harbors on the west, Rome naturally had little contact with Eastern peoples until her institutions were well established. On the contrary, she faced toward Gaul and Spain, and, through Sicily, toward Africa. Her first wars were with inferior nations and led naturally to conquest, to expansion of territory, and to the civilizing of fresh, vigorous peoples. Later the East also came under her sway, her central position enabling her to concentrate her forces and conquer her enemies in detail.

It was this career of conquest and expansion that compelled Rome to develop a new form of state. The city-state constitution broke down when it was applied to a wide empire, and the tendency toward democracy was checked by the need for a vigorous, consistent policy in dealing with various peoples in all parts of the earth. Real power fell into the hands of the army, which alone could control the provinces, and of the mob at Rome, who alone exercised political rights; and the attempts of various leaders to control one or both of these resulted in the series of civil wars that marked the end of the republic. Empire was the inevitable outcome of such conditions. Concentration of authority, uniformity of law, centralized organization, — these were needed to bind the

wide domain of Rome into a state and to secure order throughout her realm. How well Rome succeeded in creating a successful imperial organization is shown by the fact that her rule lasted for five centuries in the West and for fifteen centuries in the East. The Christian church developed its organization on a Roman basis; the ideal of world empire long outlived the destruction of actual unity; and Roman law and Roman methods of colonial and municipal administration underlie modern systems. Sovereignty and citizenship were worked out by Rome, and her methods of binding divergent nations into political unity have never been surpassed.

The formation of this united and well-governed empire was not accomplished, however, without accompanying evils. To secure authority, individual freedom was sacrificed; local self-government disappeared as centralized administration grew. Greece had developed democracy without unity; Rome secured unity without democracy. Rome's system prevented political education, and its very perfection brought about its ultimate fall. The ability to combine sovereignty and liberty, to make democracy possible over large areas, and to secure the best interests of both individual and state was reserved for a later time and a new people. Rome contributed but one side of political development, — sovereign organization, — although that was the side most needed at that period of state formation.

34. The feudal state. The internal decline of her world empire made it increasingly difficult for Rome to maintain her frontiers against those Teutonic barbarians whom she had been unable to conquer. Great numbers of these were gradually admitted and many found service in the army. By the fifth century A. D. the boundaries were so indistinct, the army so largely barbarian, and the pressure along the frontiers so great, that the declining empire in the West fell to pieces and was parceled out among the various Teutonic tribes. The work of the Middle Ages was the gradual fusion of Roman and Teutonic population and institutions, the former predominating in the south of Europe, the latter in the north. This process was marked at first by considerable destruction. In the Dark Ages Roman civilization and Roman political ideas

seemed almost lost. Toward the close of this period the Renaissance marked the gradual emergence of many of the old ideas and institutions, modified, of course, by ideas and institutions of the Teutons. The result of this process was modern civilization and the modern state; and during the process such political life as existed was largely of the peculiar, transitional form commonly known as "feudal."

To a complete understanding of the feudal state some knowledge of political methods among the Teutons is necessary. Before entering the Roman Empire their organization was that tribal form which usually grew out of the patriarchal family. Largely because of physical conditions, the Teutons continued their rural organization and had not created a city state. This emphasized the importance of the individual as opposed to the sovereignty of the state. Such authority as existed was based largely on personal loyalty. Leaders were chosen by the people, and ability in those lines that a vigorous, warlike people love was the basis of choice. Popular assemblies in the various units were held and all freemen had a voice in public affairs. Teutonic ideas of law and justice, while crude and unsystematic, contained possibilities of growth and added an important element to the Roman law which had been codified and was in danger of stagnation.

These elements, emphasizing individualism, liberty, and local self-government, were directly opposed to the Roman ideals of authority and centralization; and the immediate result of their fusion was the apparent destruction of all organized political life. The absence of central authority and the need for some form of protection and order placed political power in the hands of every man that was strong enough to wield it. An undeveloped economic system made land the chief form of wealth, and as land was parceled out among the conquerors, governing authority went with it. Thus were brought together the holding of land, the exercise of political power, and the Teutonic personal relation of vassal and lord. The increasing wealth of the leaders, the influence of Roman ideas, and the confusion of the times strengthened this nobility, while the popular assemblies decreased in importance and in some parts of Europe disappeared. Thus Europe was split up into a

large number of political fragments, some of which were held together by more or less definite ties to a common superior, though in practice each fragment knew no law but its own. Such a condition naturally resulted in disorder and anarchy, in conflicting laws and authorities, in the complete subordination of the mass of the people. Neither unity nor liberty was possible in feudalism, and the political development of centuries seemed wasted.

The only institution that retained its unity during the Middle Ages was the church. Growing up on the ruins of the Roman Empire, it adopted imperial organization, and its power was further strengthened by the superstitious reverence in which it was held by the barbarians. The absence of strong government and the power of religious ideas over the minds of men led the church to take upon itself many functions of the state. Preservation of peace and order was largely in its hands, and with its growing wealth in land came corresponding political authority. Even a separate system of law and of courts was developed, and its monopoly of learning made great churchmen the chief officials and advisers in government. Thus another element was added to the already confused sovereignties, and the way was paved for the bitter conflict later between church and state.

In spite of actual conditions the idea of a common superior, resulting from the prestige of the Roman Empire, and the idea that it should be eternal, survived; and the titles of king and emperor remained, even though their holders had little real authority. Naturally the church was the champion of authority, and by its aid efforts were made to restore the political unity of Europe. Charlemagne came nearest to success, but his work was temporary and his successors could not again unite even his domains. Decentralization, doubtful sovereignty, conflicting laws, union of church and state, and the association of landholding, political power, and personal allegiance, — these characterized the politics of the Middle Ages. The world empire of Rome had been destroyed and as yet no new form of state had arisen to replace it.

35. The national state. Out of the chaos of feudalism a definite form of political life gradually appeared. As population became stationary and common interests developed it became increasingly

evident that new states would, in general, follow ethnic and geographic lines. Bonds of nationality, language, and religion, strengthened by natural boundaries, grouped the feudal fragments into more and more permanent combinations; and France, Spain, England, Switzerland, Holland, Russia, and later Germany and Italy, arose. This separation into distinct states, each with its own national spirit, destroyed the idea of a common superior and made possible the rise of international law and the modern theory of the sovereignty and equality of states. Similarly, the growth of a strong government in each of these states attacked the influence of the church and separated more clearly religious and political ideas, although more than a century of religious wars, civil and international, were needed before this distinction was realized.

These national states emerged as absolute monarchies. The great enemies of centralized authority were the feudal nobles, and their destruction was necessary before a strong state could exist. The crusades killed off many of these nobles and ruined others; in England the Wars of the Roses served the same purpose. The growth of industry and commerce and the rise of towns created other forms of wealth in addition to land, making the nobles no longer the only wealthy class; and the invention of gunpowder destroyed their military supremacy. As the power of the nobility diminished their strength passed into the hands of the growing kings. The mass of the people, just rising from serfdom, ignorant and unorganized, were no match for the monarchs when the nobles, who had so long stood between them and the kings, were gone. In fact, in many cases, the people welcomed the strong government of their kings, partly because they desired peace and security, and partly because of the growing national spirit that centered around the monarch as representing the state. In this general way arose the absolute monarchy of the Tudors in England, of Charles V in Spain, of Louis XIV in France. A national state with centralized government in the hands of an absolute monarch — organization again without freedom — was the immediate outgrowth of the decaying feudal system; and the series of dynastic wars and alliances that mark the seventeenth and eighteenth centuries indicates both the strength of the monarchs and the rivalry of the separate nations.

As might be expected, the development of national states was not uniform. Local conditions and past historic development gave each state its own peculiar form. In England, where the strong monarchy of the conquering Normans had early secured unity, feudalism never flourished, and the Teutonic population, retaining their democratic institutions, early began the struggle against royal authority. It was only when the nobles, who were allied to the lower classes more closely in England than elsewhere, had been weakened that this gradual, democratic development was checked and the absolute monarchy of the Tudors and Stuarts became possible. On the other hand, absolute monarchy was the logical outcome of French conditions. Starting with the most complete feudal decentralization, the Capetian line had been gradually extending its territory, perfecting its administration, securing uniformity of law and a national army and finance. A centralized French monarchy had been their ambition for centuries. Germany and Italy, because of their connection in the Holy Roman Empire, — causing every aspiring German ruler to waste his resources in devastating Italy, — because of their long struggle with the papacy, and because they were the battle ground of Europe in both religious and territorial wars, were unable to secure national unity and strong government until the nineteenth century.

The next step concerns the conflict of king and people within the state. With the growth of intelligence and wealth the mass of the people demanded more political rights and privileges. The overthrow of the feudal system destroyed the innumerable vertical groups of society and led to a horizontal division into classes or estates that had common aims and interests. In addition to this, representative government was created. Thus both the motive and the machinery of democracy existed, and absolutism in reality hastened its progress. Power in the hands of a monarch was more apparent and more easily attacked than when possessed by a number of feudal aristocrats, and when the divine authority of the ruler was questioned, the people began to realize that power lay in their hands if they wished to wield it. The last century witnessed the rise of democracy, accompanied by more or less disturbance in proportion as the old order was established and refused to yield.

Here again the process was not uniform in all states. In England the growth of democracy — the completion of a process long begun — was, in the main, gradual and peaceful. In France it meant a complete break with past tendencies, and caused the terrors of the Revolution and the rise of a Napoleon. Elsewhere the monarchs learned wisdom by experience, and yielded as political consciousness spread among their peoples. Local self-government, with representation for common affairs, has been the usual arrangement that resulted. In most cases the king has remained as a historic figurehead, but real sovereignty has passed to a larger proportion of the population and the state rests on a broad basis. Thus modern democratic national states represent the most advanced form of state evolution. With ethnic and geographic unity they have a strong natural basis; and, by combining local self-government and representation, they secure that adjustment of liberty and sovereignty which, even over large areas, may subserve the interests of both individual and society. However, many minor relations within the state are still difficult to adjust, and the relations of state to state are as yet by no means satisfactory.

At the present time two tendencies, both powerful, yet in many respects antagonistic, exist. On the one hand is the emphasis placed on ethnic and geographic unity. The national state, with well-defined natural frontiers and with a homogeneous and united people, seems to be the goal toward which the development of the past five centuries has tended; and states wage war to secure or maintain their "natural boundaries," and use every means to increase the solidarity of their population. A number of well-organized, yet distinct and often rival, national states is the logical outcome of this movement. On the other hand many influences interfere with this process. The formation during the last few centuries of great colonial empires, composed of widely scattered areas and most divergent peoples, has tended to destroy the geographic and ethnic unity on which the national state is based. The growth of enlightenment, which makes sympathy more cosmopolitan and the unity of mankind more real, is breaking down the former narrower ideas of patriotism and national supremacy. Finally, the enormous expansion of economic interests, by which

the whole world has become a single market, with trade no longer limited by natural or political boundary lines, is striking a powerful blow at the very foundation of the national state. Whether these apparently opposite tendencies are in reality only two sides of the same movement, looking to the formation of a world federation on the basis of national units, the future alone will reveal.

36. General features of state development. The preceding discussion gives a brief survey of the evolution of the state among those peoples that have contributed to modern political thought. Several generalizations may be drawn from this material:

1. As in the evolution of all organizations, the process has been from the simple to the complex. Governmental organs have differentiated and their functions become more definite, and this process has been accompanied by increasing unity as the interrelation of part and part became more complete. Consequently the authority of the state, which was at first uncertain and irregular, grew more definite, at the same time making possible greater individual freedom, since the action of the state was no longer capricious or despotic.

2. The development of the state has been accompanied by the growth of political consciousness and purposeful action. Early stages of social union were largely intuitive, but man gradually came to realize the possibility of change due to his own efforts. Laws originated from legislation as well as from ancient custom; governmental organization was remodeled, its functions narrowed or expanded; and the idea of reform arose. As political consciousness spread over a constantly widening proportion of the state's population, democracy developed, and, as sovereignty rested ultimately on a more extended basis, the existence of the state became more stable.

3. In general an increase in the area and population over which the sovereignty of the state extends, characterizes the evolution of the state. While this process has not been uniform, as a comparison of the Roman Empire in the past with several small states at the present time bears witness, it is sufficiently marked to merit attention. Four modern states control more than half the entire land area of the globe, the British Empire alone covering over

one fifth. When compared with the large number of political communities into which primitive man was grouped, the half hundred sovereign states of the present day show considerable progress toward unity. The advance in political ability, making possible the successful working of governmental organization in large areas, the development of communication and transportation, and the improvements in economic conditions, enabling a given area to support a dense population, — all tend to increase the size of the state and the number of its citizens. Obviously the form of government and the power of a state in peace and war will be affected by the extent of territory and by the number of inhabitants, size being a source of strength or of weakness, depending upon conditions in each state.

4. State development has been marked by the separation of politics from some institutions and by increasing governmental interference in others. Religion, which at first was closely bound up in state existence, is to-day almost entirely separate ; the private life of individuals is under less state supervision than formerly. On the other hand, the idea that the state should carry on certain activities which public welfare demands, and which individuals cannot or will not undertake, is gaining ground. Education, sanitation, the care of defectives, and the punishment and prevention of crime are illustrations of this line of growth. During the past century, especially, the fundamental changes in political, economic, and social life have caused a complete reversal in the attitude of man to the state. Instead of the individualism that opposed the extension of state functioning, there is now a growing demand for increased activity on the part of the government.

At the same time this state interference, now eagerly demanded, differs from the bitterly opposed state interference of earlier centuries. That was executive in nature, irregular and often capricious in enforcement, and removed in sanction from popular control. Such governmental encroachment has been greatly reduced. The expanding authority of the modern state is legislative in nature, and our detailed statutes, multiplying year by year, are at least fairly definite and uniform, and have their origin in popular representative bodies. However dangerous in the future the zeal for

making laws may become, men have not yet wholly lost their traditional hatred of executive power or their trust in representative assemblies.

5. In many ways the most significant general feature of state development is the method by which the compromise between state sovereignty and individual liberty has been worked out. Primitive man, untamed and anarchistic, needed to be taught obedience; hence the first successful states were those whose customs were most rigid and whose organization was most despotic. Such a system was fatal, however, both to progress on the part of the individual and to unity when the state expanded. On this basis the Oriental empires possessed neither organization nor freedom. The Greeks, in developing individual liberty, sacrificed unity; Rome, perfecting her organization, crushed freedom. The Teutons, combining their political ideas with the ruins of Roman institutions, ultimately evolved the modern democratic national state, man's most advanced political product. In it the diminutive size of the city state, too weak to carry on the activities necessary for public welfare, is avoided, as well as the unwieldy and stagnant uniformity of the world empire. Physical basis of ethnic and geographic unity is utilized and political bonds are strengthened by common interests which seem natural and inevitable.

Finally, by the principles of local self-government and representation, an organization which secures unity in common affairs without sacrificing individual liberty is made possible, and democracy over large areas is at last secured. That the ultimate form of the state has been reached is not likely. The balance between sovereignty and liberty is too nicely adjusted to be easily maintained, and tends always toward despotism on the one hand and anarchy on the other. Constant vigilance is necessary to preserve this balance under changing conditions, and no two modern states are agreed as to what is the proper adjustment, or how best to secure it. Later chapters on comparative government[1] will outline existing conditions in leading states, and the final chapters[2] on the proper functions of government will suggest the relative merits of different systems.

[1] See Chapters XVI–XXIII. [2] See Chapters XXIV–XXV.

Present conditions indicate a decided tendency toward uniformity among the most important states, both in the form of their organization and in the nature of their activities; and the growing unity of civilization will probably compel the future development of all states to follow similar channels. Each state may thus imitate the successful institutions developed by its neighbors, and may avoid the evils which experience elsewhere has made evident. European states, making powerful efforts to secure national unity and to create ethnic solidarity, watch with interest the results of race mingling due to unrestricted immigration to the United States. France, in her zeal to establish a democratic form of government, imitates both the cabinet system of England and the presidential system of the United States, regardless of their inherent contradictions. Socialism bids fair to become an international political party. The evolution of each state has reached the point where it is profoundly modified by conscious direction and by the influence of other states.

OUTLINE OF CHAPTER VII

REFERENCES

IMPORTANCE OF POLITICAL THEORIES

1. INDICATE GENERAL CONCEPTS AND PROBLEMS OF POLITICAL SCIENCE
2. INDICATE CONDITIONS AND SPIRIT OF THEIR AGE
3. INFLUENCE POLITICAL DEVELOPMENT

ANCIENT POLITICAL THEORY

1. ORIENTAL POLITICAL THEORY
2. GREEK POLITICAL THEORY
3. ROMAN POLITICAL THEORY

MEDIEVAL POLITICAL THEORY

1. THE TEUTONS
2. THE CHRISTIAN CHURCH

MODERN POLITICAL THEORY

1. THE FORCE THEORY
2. THE UTILITARIAN THEORY
3. THE DIVINE THEORY
4. THE SOCIAL-CONTRACT THEORY
5. THE ORGANIC THEORY

THE DIVINE THEORY

THE SOCIAL-CONTRACT THEORY

1. THE NATURE OF THE THEORY
   - *a.* The "state of nature" and "natural law"
   - *b.* The political compact
   - *c.* The governmental compact
2. HISTORIC DEVELOPMENT OF THE THEORY
   - *a.* Hobbes's theory
   - *b.* Locke's theory
   - *c.* Rousseau's theory
3. CRITICISM OF THE THEORY
   - *a.* Historical
   - *b.* Legal
   - *c.* Rational

The Organic Theory

1. nature of the theory
2. criticism of the theory

Present Political Theory

1. as to the origin of the state
2. as to the nature of the state
3. as to the functions of the state

CHAPTER VII

THEORIES OF THE STATE

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37. Importance of political theories. All early social organizations arose spontaneously, and for a long time grew without conscious direction. Later a point was reached when man, realizing

what was taking place, began to modify his institutions. As a result he was led to examine their nature and to attempt an explanation of their phenomena. To this general process the development of political institutions forms no exception. At first man obeyed authority from fear of physical or supernatural force, or from unreasoning custom; but, as political consciousness arose, he attempted rational explanations of political power. Crude beliefs, mingled with concepts by no means political, were followed by more reasonable theories, which, sometimes in advance, sometimes lagging behind, in general kept pace with actual political methods.

There are therefore two phases in the evolution of the state. One is the objective, concrete development of states as manifested in their governments and external dealings; the other is the subjective development of ideas as to the state in general. In political theory, as in actual political organization, a continuous growth may be traced. Principles of government are handed down from age to age, each state by its experience modifying former concepts, and these in turn influencing the states that follow. At any given time political philosophy, if analyzed, will be found to consist of a number of theories, more or less systematic, representing current conceptions of political principles. Sometimes they aim to explain the actual manner in which the state originated, or to describe its nature by analyzing existing manifestations. Often they are ideal speculations as to what the state should be. Again the question at issue is a rational justification of state authority. Why should states exist? Whence comes their authority? What limit is there to this power? By what right do particular persons express and administer the state's will? In some theories a general explanation of the state is essayed; in others, a one-sided idea arises to support some practical necessity or to bolster up a preconceived belief. Some truth may be found in all of them, and a brief survey of the leading theories is important for several reasons:

1. They throw light on the general concepts and problems of political science. The fundamental ideas underlying these theories, and their attitude to the great questions with which political science must deal, are necessary to a complete understanding of the subject,

since by means of these theories general concepts have been formed and problems have been realized and partially solved.

2. They indicate the conditions and spirit of their age. Political theories have always been dependent upon actual conditions, explaining the institutions and reflecting the motives and ideals underlying current political thought. A knowledge of these theories is therefore indispensable to historical political science.

3. They influence political development. Not only were these theories the outgrowth of actual conditions, but they in turn led men to modify political institutions, thus being both cause and effect. Changing conditions created new theories; these in turn influenced actual political methods. Theory and practice have gone hand in hand. No one, for instance, can understand the life of the Middle Ages without a knowledge of medieval theory concerning the relations of church and state. Neither can the growth of democracy be explained without reference to the theories on which it rested.

It is scarcely necessary to state that in viewing the various theories that men have from time to time created, the historical attitude must be maintained. However absurd or impossible these ideas may seem, they were natural results of the conditions and spirit of their age, and played their part in making modern political theory and organization possible.

38. Ancient political theory. Political theory in the proper sense of the term can scarcely be said to have existed previous to the rise of Greek philosophy, yet from earliest times men must have had some ideas concerning the authority which they obeyed. While our knowledge of early thought is small, yet certain principles that primitive men conceived as underlying political institutions may be pointed out with a fair degree of accuracy. The most striking feature was the lack of distinction between the sanctions of religion, custom, and law. Divine sanction accompanied almost every act, customary obligation regulated conduct, and the idea of change was abhorrent. Mingled with these were tribal and family ideas based on varying degrees of kinship. Another characteristic was the absence of deliberate purpose. Political units were formed either by the disintegration of larger units or by

combination resulting from force. Two important principles that gradually arose during this early period were (1) that political authority should be exercised over a definite area rather than over a particular group of people; and (2) that political authority might create new law.

The Oriental empires never created a political theory. Morality and law were not clearly distinguished; speculations were based upon tradition and belief rather than on reason; and sufficient political liberty to permit questioning never existed. The general form of state that they created was a hereditary, despotic monarchy, with religion the sanction for authority and with the priestly class very powerful. They contributed the idea of empire based on force, with the union of its parts resting mainly upon payment of tribute. Several new ideas were added by the Hebrews. A stronger national spirit resulted from their more spiritual religion; and their government, while essentially theocratic, developed democratic elements. The idea of a contract or covenant in which the Hebrews promised obedience in return for divine favor, the force of public opinion on all questions of importance, and the codes of laws that they created, all show more advanced political ideas.

In contrast to Oriental peoples the Greeks had no fixed dogmas and no powerful priestly class. Their gods differed from themselves only in degree, and nature was ruled by beneficent reason. Naturally they were led to individual thought and investigation, and Oriental submission and stagnation were replaced by action and change. Law as divinely sanctioned custom gave way to law as the will of the state, although the Greeks never entirely escaped from the feeling that the source of law was in natural reason, to be discovered rather than created by man. The state was viewed as the highest form of life, indirectly divine or "natural" in origin; and all interests of the individual, moral and intellectual as well as political, were subordinated to its welfare. State and government were not distinguished, neither did a clear line separate public and private affairs. Since the Greeks viewed the state as the perfect whole, of which each individual formed a part, a logical corollary led to their doctrine that each citizen should share in political rights. This democratic idea was aided by the small size of their units;

and in turn the Greek belief that all citizens should take part in government maintained the city state, limited as to territory and population, as their ideal. The wide interests that civic life included within these small units created remarkable energy and keen thinking in politics. However, the peculiar circumstances under which the Greek states arose, prevent an extensive application of their political principles to modern conditions. These included :[1]

1. The universal existence and public recognition of slavery, affecting ideas of both political rights and personal liberty.

2. The small size of the states, preventing development of representation or extended administration.

3. The absence of modern complicated industrial problems.

4. The absence of any provision for local government or government of dependencies.

In the philosophical speculations of Plato,[2] and especially in the more practical system of Aristotle,[3] based on history and observation, may be found the best statements of Greek political theory.

Although the Romans were not a speculative people, and took their philosophy, with little modification, from the Greeks, yet in their actual system of law and government they worked out principles that made a distinct contribution to political theory. They developed the idea of positive law, distinct from religious and moral sanction. They conceived the state as a legal person, with sovereign power resting in the Roman citizens; and to them sovereignty meant authority in legislation as well as in administration. Besides, citizens possessed rights against other citizens and against the government, and an elaborate system of jurisprudence was developed. Like the Greeks they considered the state as "natural" and the life of the individual subordinate to it; yet as a citizen the Roman also possessed definite legal rights whose protection was the chief purpose of state existence. Finally, as a result of their conquests, their ideal was a world empire. Instead of the city state, humanity organized was their aim. In meeting the practical difficulties of administration over great areas, in the impartial

[1] Amos, The Science of Politics, pp. 24–30.
[2] Republic; Statesman; Laws.
[3] Politics; Nicomachean Ethics.

application of uniform law, and in the creation of local organs of government, the Romans not only contributed to political principles, but also impressed on the thought of mankind a more scientific view of the proper conditions of good government. In the writings of Polybius [1] and Cicero [2] may be found the best statements of Roman political theory.

39. Medieval political theory. In the Middle Ages two new elements were added to political thought by:

1. *The Teutons.* These conquerors who ruled in the West brought in ideas of confident individualism, of local independence, of participation in political authority. In the feudal states that arose as Teutonic and Roman ideas mingled, the empire became merely an ideal, maintained more by religious than political unity; and the form of the state suffered from a confusion of public with private law. Sovereignty became the hereditary possession of families and governing authority was based on the holding of land. While feudalism never really developed a political theory, and was in some respects a retrogression, it introduced elements needed for further political progress.

2. *The Christian church.* The growth of the church and its organization, modeled on the Roman Empire, the rise of the papacy, the alliance with the Franks, and particularly the increased temporal power, as the clergy became governing officials and the church a great landowner, were the most important influences on medieval political theory. Religious belief monopolized the attention of thinkers in the early Middle Ages, and when political thinking revived it was concerned chiefly with the proper relation of church to state. In the early church the principle that its kingdom was not of this world was emphasized, and the spheres of church and state were carefully separated. With the union of church and state each claimed that the other was encroaching on its proper sphere, and rival theories arose. The papal party claimed superiority for spiritual power as more directly conferred by God. The supporters of imperial power also claimed direct divine authority and demanded responsibility to God alone. The culmination of papal theory may be found in the writings of St.

[1] History of Rome. [2] De Republica; De Legibus; De Officiis.

Thomas Aquinas,[1] an attempt to combine the philosophy of Aristotle with scholastic arguments for church supremacy. With the increasing study of Roman law and the growth of national states actual facts no longer supported papal claims, and the jurists of the fourteenth century did not lack arguments to support the absolute monarchies then arising.

From about 1350 medieval issues declined and new conditions led to new theories. The national idea grew at the expense of the imperial; the power of the feudal nobility declined; and towns, resulting from commerce and industry, became increasingly important. At the same time, in ecclesiastical affairs, the great schism and the conflict between the papal and the conciliar idea weakened the authority of the pope and led to an examination of religious authority in general. National antipapal revolts broke out in several countries, and the claims of the church to political power could no longer be maintained. The writings of Machiavelli, which may be viewed as closing medieval and opening modern political thinking, indicated the new mental attitude and the new questions at issue. Morality and religion were relegated to an insignificant position. The historical method replaced scholastic dogma. Men were viewed as essentially selfish; the state rested on force, and material prosperity was its conscious aim. In bringing theory again in touch with actual conditions a most powerful blow was struck at medieval method. Finally, in his distinction between public and private morality, his justification of conquest, and his recognition of nationality, Machiavelli anticipated essentially modern ideas.

40. Modern political theory. In discussing political theory since the Reformation it will be advisable first to trace the general development of political ideas in their relation to actual state evolution during this period; then to view in more detail those theories that have most influenced present political conditions. At the opening of the modern period interest centered around the Protestant Reformation. Beginning as a religious movement, it became increasingly political in nature, and the doctrines of its leaders, especially of Calvin,[2] influenced the theory of the state. The

[1] De Regimine Principum. [2] Institutes, Bk. IV.

relation of church to state was still the great problem. In essence the reformers returned to the doctrine of two powers, church and state, distinct in function but both resting on divine sanction. They strengthened the growing national idea by attacking the concepts of universal church and universal empire, but they also strengthened the authority of rulers by their doctrine of divine right. In contrast to Machiavelli their theories were medieval and scholastic, but in the teachings of Calvin, as applied later by his followers in France, the Netherlands, and England, the way was prepared for liberty. As God's chosen people they had certain rights secure from temporal authority, and passive submission was not demanded if monarchs violated the higher law of nature.

The century following the Reformation was marked by civil and external wars based on religious differences, and in this process absolutism in government was seriously attacked. The idea that authority resulted from a covenant between ruler and subjects, and that tyrants should be resisted, gained ground in the writings of Catholics and Protestants alike. The state thus rested on human rather than divine sanction, and ideas of natural law and popular sovereignty, familiar in ancient theory, were revived. Toward the end of the sixteenth century, in the writings of Bodin,[1] the first complete system of politics since Aristotle, based on history and observation, appeared; and early in the seventeenth century, in the work of Grotius,[2] the basis was laid for international law. Since that time political thought has been dominated by a growing interest in democratic principles. The older divine-right theory was replaced by that of the "social contract," which served in turn as the basis for absolute monarchy, limited monarchy, and democracy. The idea of popular government was added to that of popular sovereignty, and the relation of state to individual demanded new adjustment. Ideas as to the proper scope of state activity underwent great change, and international regulation became more extensive and uniform. The influence of external environment was increasingly appreciated, and, in the nineteenth century, political theory was affected by the doctrine of biologic evolution. Finally, in the works of Austin, Maine, and numerous

[1] De Republica Libri Sex. [2] De Jure Belli ac Pacis.

recent scholars, the present principles of political theory were worked out.

In modern political thought several theories attempting a rational justification of state authority may be noted. Among the minor ones are:

1. *The force theory.* This theory finds the origin of the state in the subordination of the weak to the strong; it traces state development as the result of conquest, and justifies its authority by the proposition that might is right. In the medieval period the church fathers urged this theory, emphasizing the evil nature of political power, so that the authority of the church might be enlarged. In the last century the Individualist School adopted this point of view in their desire to protect individual liberty against governmental encroachment. It also underlies the political theory of socialism, which views modern governments as the outgrowth of a system of aggression by which the rights of many have been sacrificed to the might of a few. In the reaction against the popular-sovereignty theory of the French Revolution, a modified form of this doctrine appeared in the "patrimonial theory" of Ludwig von Haller, which supported monarchy by the argument that obedience was the natural duty of the weak and benevolent authority and protection that of the strong.

In so far as this theory aims to explain state origin and development it contains an important element of truth, since conquest was one of the most powerful forces in state-building, and the sovereignty of the state always rests ultimately on force. It makes the mistake, however, of neglecting other contributory influences. As a justification of state authority, the doctrine that might makes right scarcely needs refutation. Obedience to force is an act of necessity, not of duty, since, where no free choice exists, morality is absent. Obedience that is due only so long as disobedience is impossible scarcely justifies state existence.

2. *The utilitarian theory.* This doctrine, related to the development of English economic theory, explains the state on the basis of its obvious usefulness, justifies its authority on the basis of necessity, and sets as its ideal the greatest good of the greatest number. A clear statement of this point of view is found in

Bentham's "Fragment on Government." While containing important elements of truth in its statement of the ideal that aims to reconcile individual and social welfare, this theory scarcely touches the real problem. The usefulness of the state, while indicating the reason, does not explain the method, by which it came into existence; neither does it explain by what right certain persons exercise authority over others. Besides, in practical application, attempts to secure the greatest general welfare open endless disputes as to state function.

In addition to these partial explanations three other theories, because of their prominence in the history of political ideas, deserve more particular attention:

1. The divine theory
2. The social-contract theory
3. The organic theory

41. The divine theory. The theory that the state is a divine creation is as old as the state itself. In the early Oriental empires religious and political ideas were not separated. The sanction of law and the authority of rulers came from the gods. In the Hebrew theocracy it was believed not only that God was the source of authority, but that he continued to take a direct part in government. Among the Greeks and Romans the state, as a natural manifestation of man's political instincts, was considered indirectly divine, and religious ideas remained; although in practice the Romans maintained that law and government were human creations, resting on human sanction. However, it was not until the medieval conflict between papacy and empire broke out that the divine theory was formulated.

As the church, at first a spiritual organization alone, gradually exercised more temporal power a dispute arose as to whether governing authority, which all agreed came from God, had been directly bestowed upon emperor or upon pope. Toward the close of the Middle Ages, when the growing national states and the Reformation had removed the papacy as an important rival in political power, the question was revived in the contest between king and people. The old doctrine that authority came from God

became valuable to support royal power against the growing political consciousness of the masses. During the seventeenth century the divine-right theory aimed not only to justify political authority in general, but more especially to legitimize that of existing rulers as representatives of God. The monarchs of that time claimed absolute and irresponsible power, on the ground that they were ordained of God to exercise authority divine in origin. In the writings of James I of England, and in Sir Robert Filmer's "Patriarcha," may be found the extreme statement of this theory. The rise of democracy, and the "social-contract" theory on which it is based, displaced the divine-right theory, although traces of its influence may still be observed in some European states.

To-day the theory, in spite of its historic importance, scarcely needs serious consideration. It served as a sanction for authority at a time when obedience and discipline, rather than freedom, were needed. It taught men to obey when they were not yet ready to govern themselves. In present political theory, however, it has no place. Whatever may be the ultimate source of power or of human nature, the state is a human institution; its laws are created by men and enforced by them. Divine or moral law deals with motives; the state deals with external actions; and it is quite possible for moral and legal obligations to be contradictory. At all events, since their sanction is fundamentally different, it is the latter alone with which political science deals.

42. The social-contract theory. This theory, the most important, in its influence on political thought, of the various attempts to explain the origin and justification of the state, may be considered under the following topics:

1. Nature of the theory
2. Historic development of the theory
3. Criticism of the theory

1. *The nature of the theory.* The social-contract theory contains three essential elements:

(a) The "state of nature" and "natural law." It conceives an original, nonpolitical life of mankind before government was instituted, called the state of nature. During this period man obeyed

no laws of human enforcement, but was subject only to regulations or general principles inherent in nature itself. Under this "natural law" every man possessed "natural rights."

(b) The political compact. This state of nature, either because it was an ideal condition too good to last, or because from the beginning it was a condition of selfish aggression, soon became unbearable. By agreement men formed themselves into political bodies, giving up their natural rights in return for common protection. Natural law was replaced by the law of the state, which, enforced by all, created mutual rights and duties. This political compact, if considered as an actual historic fact, explained the origin of the state; if not, it served as an interpretation of the nature of political authority.

(c) The governmental compact. In addition to the political compact by which an aggregate of individuals formed themselves into a body politic, a further agreement was necessary between rulers and subjects, according to which a government was created and authority placed in particular hands. This governmental compact determined the legitimacy of existing government and the extent of its power.

This in brief is the social-contract theory. It is essentially individualistic, viewing the state as the deliberate creation of man, who, even before its existence, possessed natural rights; and the authority of government as resting ultimately on the consent of the governed. The importance of the theory and the various forms it has taken may best be appreciated by a brief survey of its historic growth.

2. *Historic development of the theory.* The idea of natural law was first worked out by the Greek philosophers. Previously all law was considered as divine in origin and sanction. Gradually, especially in the system of the Stoics, arose the belief in a rational, universal law of nature to which human law tended to conform; and this idea was incorporated in Roman jurisprudence. In the theory of the Christian church the state of nature was identified with the ideal condition prevailing before Adam's fall, and the state was therefore, because of human sin, a necessary evil. After the Renaissance human and divine sanctions were more clearly

separated, and, as indicated, natural law served as the basis for the social-contract theory. To this day a general belief in the inalienable rights of man shows surviving traces of this doctrine. As will be seen later,[1] it also influenced the beginnings of international law.

The idea that governmental authority is based on a compact between rulers and subjects is also of ancient origin. Prevalent among the Hebrews,[2] suggested by Plato,[3] and universally accepted by Roman jurists under the Empire, it also formed the basis for the whole system of feudalism. During the contest between emperor and pope, church writers, attacking the exalted claims of the emperor, held that all civil rulers received their authority by means of a covenant with the people. Later, practically all thinkers agreed that ultimate authority lay in the people, and that by contract they had transferred this power to their rulers. A difference of opinion arose, however, as to the nature of this compact; some viewing it as an irrevocable surrender, others as a delegation of authority liable to withdrawal if abused. In this form it became a part of the general social-contract theory, and influenced the distinction between state and government and the growth of democracy.

The more general theory that viewed the origin of the state as the result of a political compact did not arise until the seventeenth century. Previously the state had been considered as, directly or indirectly, the work of God. In the writings of Richard Hooker[4] in England, and Johannes Althusius[5] on the continent, the theory was first outlined, and was soon after incorporated into the great work of Grotius. The logical development of the theory, however, was carried out by Hobbes[6] and Locke[7] in England, and by Rousseau[8] in France, and their work needs more detailed consideration.

(a) Hobbes's theory may be stated as follows: Man being essentially selfish, the state of nature was one of war. During this time no legal rights existed, — only natural rights, based on utility and

[1] See Chapter XI. [2] 2 Samuel v. 3.
[3] Republic, p. 359; Crito, p. 51 (Jowett's translation).
[4] Ecclesiastical Polity. [5] Politica Methodice Digesta, etc. [6] Leviathan.
[7] Two Treatises of Government. [8] The Social Contract.

reason. To escape the constant fear and danger of this condition, men agreed to submit themselves to a common authority. The power thus created by uniting the natural rights of all was the sovereign. The contract once made, the authority of the sovereign was absolute. Since he was no party to the contract, he could not break it, neither could the people withdraw rights which they had irrevocably transferred. Obedience was necessary, no matter how the sovereign exercised his power, and the right of revolution was forever gone.

Hobbes, writing at the time of the civil war in England, used his theory to uphold the absolutism of the Stuarts. Divine right could no longer be seriously urged, and a new theory was needed to reconcile absolute monarchy with the growing belief that ultimate political power resided in the people. Aside from the fundamental fallacies inherent in the doctrine of natural rights, to be considered later,[1] Hobbes's chief defect was the failure to distinguish between state and government. He did not realize that the form of government may be changed without destroying the state, and that existence of sovereign power does not necessarily mean the absolute authority of the particular persons who exercise it.

(b) Locke differed from Hobbes in several respects. He conceived the state of nature to be one of equality and freedom. It was, however, unsatisfactory because of difficulty in interpreting and enforcing natural law. Men therefore agreed to give up certain of their natural rights to a common authority, and by this means protect their remaining rights. To this contract the ruler also was a party and to its terms was equally bound. If rulers failed to maintain those individual rights for whose protection they had been established, the contract was dissolved, and the people, resuming their original liberty, might set up a new government. In this form the doctrine was made the basis of limited monarchy, Locke writing to uphold the Revolution of 1688, by which a king was deposed and a new king created. The chief contribution of Locke was his recognition of the limited powers of government, his theory serving as a basis for revolution and democracy. He failed, however, sufficiently to distinguish between moral and civil

[1] See section 54.

laws; and he did not clearly see that revolution, however desirable, is never legal.

(c) By Rousseau the theory of natural rights was carried still further. The state of nature was conceived as a condition of ideal happiness, only abandoned because growing population and advancing civilization brought evils. Men were thus compelled to form a social contract by which each merged his natural rights into a common authority or general will. To this contract the government was not a party. Final authority always remained in the hands of the people, and the government was viewed merely as the executive agent to carry out the general will. Even representative government was considered an evil, direct popular assembly being the true sovereign.

This theory, emphasizing popular sovereignty, naturally served as the basis for democracy and supported the revolutions of the eighteenth century. It clearly distinguished state and government, and pointed out the delegated authority of the latter. However, it practically destroyed the legal nature of authority by making it identical with public opinion, and by placing the permanence and sanction of government at the mercy of a rather indefinite general will.

Toward the end of the eighteenth century the general principles of the social-contract theory exerted considerable influence on the continent and were particularly powerful in America, where they are to be found in the Declaration of Independence and in the bills of rights included in almost all the written constitutions. In the writings of the statesmen of this period, especially of Jefferson and Madison, its doctrines were expressed, and to this day many of them remain unconsciously at the basis of American political thought.

3. *Criticism of the theory.* In spite of the great value of this theory in serving as the basis for modern democracy, and in spite of its elements of truth in emphasizing the importance of the individual, the possibility of modifying political institutions by direct human effort, and the fact that ultimate political authority lies, at least potentially, in the people, the fundamental principles upon which the theory is based are incorrect. These may be criticized on the following grounds:

(a) Historical. It is a manifest absurdity to suppose that people in the earliest stages of civilization, without previous experience in government, should deliberately agree to form a political organization. Besides, our knowledge of the beginnings of organized life shows that the individual was of little importance. The family was the unit, property was held in common, custom formed law, and each man was born into his status in society. Under such conditions free contracting on the part of individuals would be out of the question. Examples of people, familiar with political ideas, deliberately forming new organizations may be given, as in the case of the *Mayflower* compact of 1620, or even of the United States Constitution; but no record exists of a people, formerly ignorant of political institutions, contracting to form a state.

(b) Legal. It is evident that such contracts could have no legal force. Since no political organization existed to define and enforce contract rights, the original agreement by which the state was formed would not be legally binding. Further contracts based upon it would consequently be invalid, and all rights would be without legal foundation.

(c) Rational. It is not sufficient to show that this theory is a historical and legal impossibility, since its chief purpose is rather a philosophical attempt to justify the apparent contradiction between political authority and individual freedom. Even as a rational analysis, however, this theory can no longer be upheld. The relation of the individual to the state is not a voluntary one, since man is born into the state and cannot avoid its obligations. Neither does the contract idea of an exchange of obedience for protection express the proper relation of man and state. Care of the poor and helpless and provision for the welfare of future generations, both important functions of all modern states, cannot be justified on these grounds. Finally, the fundamental basis of the theory, the conception of natural "laws" and "rights," is fallacious. The nature of law and of rights will be discussed more fully in a later chapter;[1] for the present it will suffice to point out that a right is a privilege emphasizing corresponding obligations on the part of others, and is valuable only in case some

[1] See Chapter X.

authority exists to maintain the right by enforcing the obligations. In a state of nature man would possess only powers, and his natural "rights" would constantly conflict with those of others, thus destroying the "rights" of all except the strongest. It was, then, not until a definite political authority existed, strong enough to compel every individual to refrain from interference with others, that law or rights came into being. In other words, liberty is possible only under authority. No law or rights, except in a purely ethical sense, existed before the state arose.

43. The organic theory. This theory attempts to remove the conflict between state and individual by merging them into one organism. Its chief features may be outlined as follows: Men are by nature "political beings," and their universal tendency to social organization creates the state. This forms the highest natural organism, like plants and animals subject to the usual laws of development, decay, and death. Individuals whose existence is merged in that of the state are the basic cells of which the organism is composed. The various departments of government correspond to the organs of living beings, specialized in function and modified by changing conditions. Like other natural organisms, the state develops in its environment, its organs becoming more distinct and definite, and at the same time more closely interrelated. The state has both a physical and a psychic nature. It feels, it wills, it acts; it is the highest form of organized life, — a sort of magnified person.

In the political theory of the Greeks may be traced the beginnings of this point of view. They considered political life as inherent in nature, and subordinated individual to state. It was not, however, until the biologic theory of evolution was established that these ideas were expanded to their logical conclusion. Since the middle of the last century this theory, especially in Germany, has played a considerable part in social philosophy; and certain writers[1] have worked out elaborate and ingenious comparisons between the state and living organisms, tracing identity even in the detailed functions of political and biologic life.

[1] Spencer, Principles of Sociology, Part II.
Schäffle, Bau und Leben des socialen Körpers.

Viewed merely as an analogy, this theory brings out many striking similarities in structure and in method of growth, and emphasizes the unity and continuous evolution of the state. It is thus a valuable reaction against the extreme individualism of the social-contract theory. It is of course true that the state is natural in the sense that everything that exists is natural; but this explains neither its origin, nor its nature, nor its purpose, and is no justification for its authority over those who do not possess the political instinct. Furthermore, a number of objections arise to a literal acceptance of the state as an organism, and these objections are fundamental.

1. The state has life, sensation, and thought only through its units, — individuals; the animal organism has one life, sensorium, and brain, and its cells have no individual life or volition. Men have life and interests outside the state, and at most only their conduct and not their motives are subject to its control. The organization of the state may be radically changed, and its parts are in many respects independent. Moreover, state development has been chiefly marked by the widening sphere of freedom that it has created for its members. On the other hand, in the organism the life of the parts is completely merged in that of the whole, and, in every respect, development increases the control of the whole over its units.

2. All natural organisms, by various processes, owe their origin to preëxisting organisms, deriving from them their life and their fundamental characteristics. The life of the state, however, comes from within, and cannot be derived from any other political organization.

3. The organism grows unconsciously, independent of volition, entirely dependent upon its environment and the natural laws of the biologic world. The state, while influenced by external conditions, reaches a point in its development where men, realizing their organized existence, deliberately direct and modify its forms and functions.

In a literal sense, therefore, the state is not an organism. Moreover, this theory throws little light on the practical question of what the state should do. In emphasizing the fact that the state

results from natural growth, it can scarcely mean that men in the state are to take merely a passive part in this process. In fact, this theory has been used to support views on state function ranging from individualism to socialism. According to Spencer, government has been evolved for the purpose of maintaining peace and order, and of giving protection to its citizens; and, like other organs, it should limit its activities to those particular functions for which it arose. According to many German writers, Bluntschli for instance, the state, as the highest organism, is the important unit, and collective activity is the ideal of social progress. Therefore, in spite of the valuable truths which this theory contains, in emphasizing the historic origin and continuous evolution of the state, it can be considered neither a satisfactory explanation of state existence nor a trustworthy guide to state activity.

44. Present political theory. There still remains to be considered the theory of the state held by the majority of present-day thinkers. As this has already been indicated, and will be more fully developed in the progress of this volume, only a brief summary will at this point be given.

1. *As to the origin of the state.* The modern historical or evolutionary theory of state origin considers the state neither as divinely created nor as the deliberate work of man. It sees the state, like other social institutions, coming into existence unconsciously, at various times and in different ways, as the result of a process of natural evolution. The life of men in association, their bonds of kinship and religion, the need for regulation in securing order and protection, — these created organization and authority, the crude beginnings of the state. By gradual evolution under changing conditions political life became more definite and more universal. Men learned first to obey, then to govern themselves. Unconscious development gave way to conscious progress, and state growth, influenced by external conditions, by changes in other institutions, and by the efforts of individuals, formed part of the great world movement of nature and man.

2. *As to the nature of the state.* Modern theory views the state as the outward organized manifestation of a conscious spirit of political unity. Geographic causes, common interests, the feeling

of nationality, and political expediency are among the causes that create this unity, or general will, as it may be called, and when it is outwardly realized in the creation of government, a state exists. Since natural rights are impossible, and the state, instead of destroying, creates and maintains liberty, it needs no moral justification. The method by which its powers shall be exercised and the proper extent of its activity are still unsettled problems.

The state is thus a legal person. It expresses its will in the form of law, it determines its relations to other states, it creates a government and outlines its powers, and it adjusts the mutual rights and obligations of its citizens. According to this point of view, the essence of the state is its sovereignty, — absolute internal authority over all its individuals and absolute external independence from the interference of other states. States are viewed as legally equal, each having jurisdiction over its own territory ; and, in their dealings with one another, having mutual rights and duties.

It is in the relation of states to one another that present theory finds greatest difficulties. Protectorates, spheres of influence, suzerainty, and other complicated forms of association make a practical application of the theory of sovereignty almost impossible. Hence writers on international law commonly speak of semisovereign states, and consider independence as essentially relative in its nature. It may be noted, however, that the indivisible, absolute sovereignty which the state possesses over all individuals or associations within its territory is a somewhat different concept from the independence, never entirely complete, which states possess in their external relations.[1] The former is the state's will ; the latter is rather a collection of rights and powers. The former cannot be divided, but the latter may be greater or less, depending upon treaty agreements and the need for mutual concessions if states are to have dealings with one another. In this sense the modern theory of sovereignty does not mean that each state is "wholly unlimited in its relations with other states, but that there is no body to which effective control over a sovereign state may be attributed." [2] All states are equal and independent in the sense that they possess

[1] Crane, The State in Constitutional and International Law.

[2] Merriam, History of the Theory of Sovereignty since Rousseau, p. 227.

an equal personality at international law, capable of contracting or repudiating their rights and obligations. These, however, may be variable, and the relinquishment or deprivation of certain of them is not regarded as a material impairment of the independence or sovereignty of a state.

3. *As to the functions of the state.* On this question the greatest divergence of opinion exists. Some would limit the activity of the state to the mere maintenance of order and security; others believe that state control of all activities would be beneficial. However, it is safe to say that modern theory in the main takes a middle position. It aims at such division of labor as shall secure the best interests of mankind and of the individual man. It realizes that the state is by no means an evil, and that many things are most satisfactorily dealt with by collective authority. At the same time it recognizes the value of individual initiative and competition, and leaves to each citizen a considerable sphere of free action. Without laying down general rules, it deals with problems as they arise, viewing them in the light of existing conditions and aiming to adjust with most satisfactory general results the interests of the individual and of society.

The diverse forms through which political theory has passed, and the relativity of present political thought, indicate that no theory of the state can consider itself as ultimate truth. In the past, political theory grew out of actual conditions and of existing methods of thought. A century hence our present attitude toward political problems may seem as crude and absurd as the divine right of kings or the ideals of the city state now appear.

OUTLINE OF CHAPTER VIII

REFERENCES

NATURE OF SOVEREIGNTY

1. INTERNALLY
2. EXTERNALLY

DEVELOPMENT OF THEORY OF SOVEREIGNTY

CRITICISM OF THEORY OF SOVEREIGNTY

LOCATION OF SOVEREIGNTY

1. IN THE PEOPLE
2. IN THE CONSTITUTION-AMENDING ORGAN
3. IN THE SUM TOTAL OF THE LAWMAKING ORGANS

POPULAR SOVEREIGNTY

1. NATURE OF THEORY
2. CRITICISM OF THEORY

SOVEREIGNTY AS CONSTITUTION-MAKING POWER

1. NATURE OF THEORY
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SOVEREIGNTY AS LAWMAKING POWER

1. NATURE OF THEORY
2. CRITICISM OF THEORY

REVOLUTION

1. ANARCHICAL
2. CONSTITUTIONAL
3. GOVERNMENTAL

CHAPTER VIII

SOVEREIGNTY

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45. Nature of sovereignty. The relation of state to state, of a state to its citizens, and of one citizen to another can be understood only after a further discussion of that characteristic which distinguishes the state from all other organizations, — its sovereignty. Such discussion leads naturally to the correlative of state sovereignty, namely, individual liberty. At first sight these seem mutually contradictory, but further analysis will show their proper relation. Another point to be considered is the nature of law, since in that form the sovereignty of the state manifests itself. These topics, therefore, will in turn form the basis of the following chapters.[1]

The concept of sovereignty is the basis of modern political science. It underlies the validity of all law and determines all international relations. It may be briefly outlined as follows: The state comes into being when sufficient spirit of unity exists to

[1] See Chapters IX, X.

organize a people, to create a government, to enforce laws. In order to form a state, such an organized group must be free from any limitation on its external independence. Moreover, it must contain some person or body of persons whose commands receive obedience, and who can, if necessary, execute those commands by means of force. Such person or body of persons is the sovereign, and its commands are called laws. Evidently there can be no legal limit to sovereignty, since that would imply a higher lawmaking body, and that in turn would be the sovereign. Such a body cannot limit itself, since such limitations could be removed at its pleasure. The state therefore is legally sovereign. There can be no legal limit to the lawmaking power of the supreme lawmaking organization. Since sovereignty is a legal concept, the above facts result inevitably from the definition of the state. It may be stated that, analyzed more closely, the state, in its sovereign capacity, is :

1. *Internally.* Absolute in authority over all individuals or associations of individuals within the state. Such a thing as rights against the state is impossible, since the state is the source of all rights and the enforcer of all obligations. "In so far as the individual has claims upon his fellows to a noninterference on their part with the free exercise of certain outward acts, such claims have no legal force except as recognized and enforced by the political power." [1] It must be remembered that political science deals with legal rights alone ; the moral question of right or wrong does not enter. Whether a law is good or bad is another question ; the fact that it is law is sufficient, and from the legal standpoint the will of the state is absolute. While possessing unlimited power, the state usually exercises but a small part of its authority. It grants certain rights and privileges to individuals and it voluntarily sets bounds to its own activities ; all these have, however, no legal force against the state, since it may change or destroy them at its will.

When such formal limitations are self-imposed the state must change them in a legal manner, that is, it must act through its proper organs and by the method which it prescribed ; but an unchangeable law is a legal impossibility. There have always been

[1] Willoughby, The Nature of the State, p. 181.

certain activities which the state has permitted freely to individuals, not because the state could not, but because it did not deem it expedient to interfere. In this sphere of liberty the individual is protected by the state against encroachment on the part of the government, and by the state, through the government, against encroachment on the part of other individuals. Against the state itself there could be no defense. "In every politically organized community, then, there exists a public authority to which, from the legal standpoint, all interests are potentially subject, and therefore liable to regulation and control by the state when this ruling power decides them to be of public interest." [1]

2. *Externally.* Independent of any compulsion or interference on the part of other states. Treaties, or the rules of international law by which states agree to certain limitations on their complete independence, do not destroy sovereignty, since there is no compelling authority to enforce them, states conforming to these agreements only at their pleasure. Besides, a state may grant almost complete autonomy to its colonies, as in the case of Canada, or may give large powers to its local divisions, as in the commonwealths of the United States, and still retain sovereignty, since it can withdraw these delegated powers at any time.

It naturally follows that the sovereignty of a state cannot be divided. The exercise of its powers may be distributed among various governmental organs, but sovereignty or supreme will is a unit, just as each state is a unit, and as the organization or government of each state is a unit. If sovereignty is not absolute, no state exists; if sovereignty is divided, more than one state exists. There can be no legal power back of the sovereignty of the state and no legal check on its scope.

46. Development of theory of sovereignty. The modern theory of sovereignty came into existence during the latter part of the sixteenth century, as the logical outcome of the decline of medieval political institutions and ideas and the rise of national states. During the Middle Ages no state, in the modern sense of the word, existed. The old unity based on kinship had disappeared and the modern idea of territorial allegiance and national unity had not yet

[1] Willoughby, The Nature of the State, p. 183.

arisen. Ties of personal dependence bound individuals into groups, and similar bonds on a larger scale held these groups together. The old belief that the Roman Empire was universal and the claims of the papacy to headship in temporal affairs prevented the existence of independent and equal states. On the other hand, the divided authority of feudalism and the belief in a law of nature, superior to all human laws, made impossible the modern idea of the state's unlimited and indivisible sovereignty over all its citizens. Such concepts of sovereignty as existed were a mingling of tribal allegiance and universal empire. From the standpoint of the first the king was lord of his people; from that of the second some authority must exist supreme over all kings.

Toward the end of the medieval period a number of causes combined to create new political ideas. The nobles were weakened by the crusades and by their own quarrels. Commerce and towns struck a blow at their monopoly of wealth, new methods of warfare destroyed their military supremacy. Taking advantage of their weakness, the kings, by conquest, alliance, and marriage, became supreme within their territories. This process was aided by the old traditions of the Roman Empire and by the revived study of Roman law. Feudalism, by joining governing powers with landholding, had developed the idea of territorial sovereignty, and as the intermediate authorities between king and people were removed, the king stood forth as sovereign of his state. Later, as men began to realize that government was an agent rather than a master, sovereignty was applied to the state itself instead of to the king. France was the first European state to develop its monarchy, and some theory was needed to justify this new political type. In the writings of Bodin [1] modern ideas of sovereignty were first stated. The state was recognized as supreme over all its citizens and free from external compulsion. Sovereignty was defined as the absolute and perpetual power of the state, indivisible and territorial in nature.

As the outcome of such concepts international law was developed. In the great work of Grotius [2] states were considered equal and independent, with supreme jurisdiction coinciding with their

[1] De la Republique (1576). [2] De Jure Belli ac Pacis (1625).

boundaries. States were viewed as persons dealing with each other as by contract; while within the state the authority of the sovereign was that of an owner over his property. States had mutual rights and obligations, since all were equally subject to the law of nature. In the first half of the nineteenth century the modern theory of sovereignty was further analyzed in the writings of John Austin [1]; and his conclusions, exercising an enormous influence on political thought in England and America, underlie present systems of jurisprudence. All belief in so-called "natural law" has been abandoned, and sovereignty is viewed as absolute internal authority and complete external independence.

47. Criticism of theory of sovereignty. The preceding discussion outlines the conception of sovereignty that forms, in the main, the basis for present-day political thought. It has been severely criticized, however, by certain writers. "The objections raised against it are directed to show that it is only of a formal and abstract nature, that it is inadequate in that it does not really indicate the ultimate source of political authority, and that it presents an erroneous conception of the nature of law." [2] In the works of Sir Henry Maine [3] these objections have been strongly urged. Familiarity with Oriental civilization, where long-standing custom is law, and where even the most despotic ruler must act in accordance with usages that he would never dare to change, led Maine to question whether there was in every state a determinate sovereign that had the right to create and enforce law. Clearly, such an idea is absent in the political methods of Oriental states. Even in the most advanced states there is a large body of custom, or common law, which is enforced by the courts although never definitely formulated by legislature. In these states, however, the supreme lawmaking body, if it chose, could modify or destroy such customs; and the legal principle "what the sovereign permits he commands," is applied to them. The truth contained in the criticism, however, compels us to narrow somewhat the definitions of state and of law. By state is meant only those political communities that are fully organized and possess definite sovereignty. By

[1] Lectures on Jurisprudence. [2] Leacock, Elements of Political Science, p. 59.
[3] Early History of Institutions; Ancient Law.

law is meant only the commands issued directly by properly authorized governmental authorities, and customs when enforced by the courts. Any attempt further to widen the connotation of law breaks down the definite legal concept and makes impossible any distinct line between law and the most vague public opinion.

The other objection urged against the theory of sovereignty — that it does not really indicate the ultimate source of political authority — opens up the question of the location of sovereignty within the state. Here it will be sufficient to note that any attempt to find the final source of political *influence* meets insuperable difficulties. It is, of course, quite possible that the legal sovereign is influenced by public opinion, by certain interests or classes, by religious ideas, or by any other of the motives that determine human action. Any attempt, however, to find a "political sovereign" back of the legal sovereign destroys the value of the entire concept and reduces sovereignty to a mere catalogue of influences. The point of view common to most of the critics is that ultimate sovereignty rests in the mass of the people. This, together with the whole question of the location of sovereignty, will be discussed in the following sections.

48. Location of sovereignty. Probably the most difficult topic with which political science has to deal is the location of sovereignty within the state. After it has been determined that sovereignty is the essence of the state, and that it includes both the external independence of the state from interference on the part of other states, and the internal authority of the state over all its citizens, the question next in order is, What person or body of persons within the state ultimately expresses the state's will and enforces the state's authority? In other words, where, within the state, is sovereignty located? Three main solutions have been offered as answers to this vexing problem, locating sovereignty respectively in:

1. The people of the state.

2. The organization which has a legal right to make or amend the constitution of the state.

3. The sum total of the legal lawmaking bodies in the government of the state.

Modifications in detail are found in the writings of various men, but the essentials may be reduced to the above statements. Each of these solutions contains important elements of truth; and against each of them serious objections may be urged. Since the leading writers on political science are not agreed in regard to this point, each of these theories will be considered in turn, and its strength and weakness indicated.

49. Popular sovereignty. The somewhat indefinite theory that considers sovereignty as located in the people is the logical outcome of the growth of democracy during the last century. It underlay the natural-rights philosophy as applied to the American and French Revolutions, it has been expressed in many recent political documents, and it forms the background for the political thinking of most people. It may be briefly stated as follows: Sovereignty, in last resort, is a matter of force and depends upon the ability to secure or to compel obedience; hence, the power that in case of a struggle would have the strength to command obedience is the sovereign. In early times, largely due to superstitious religious ideas, the chief or king was sovereign. Later, due to superior intelligence, organization, and military equipment, a minority of the people possessed sovereignty. To-day, due to the general spread of intelligence, wealth, and political consciousness, men are comparatively equal; and ultimate political authority rests in a majority, or at least in a large number of the people. Ordinarily this sovereignty is exercised through suffrage; in case of dispute as to its location the majority would be victorious in an appeal to arms. Hence the idea of popular sovereignty — of the authority of the state existing somehow in the mass of its citizens — has arisen, and in the minds of most people has become a fetich almost too sacred to touch.

Several objections, however, arise the moment that one attempts to analyze this concept and give it a definite and legal meaning. What persons or how many persons possess sovereignty in any given state? In case of an appeal to arms the majority is not necessarily the stronger. Women and children are of no military value, and among the men an organized group is more powerful than an unorganized mass, since the only effective way of using

force is through united effort, in other words, through obeying a commander. Without discipline a mass of people is but a mob. But when the people follow the commands of their leaders, where is their sovereignty? Just in proportion as the people are in a position to exercise sovereignty in case of war, they find that real power has passed to the military dictators that they have created. Similar difficulty is met, under ordinary conditions, if the exercise of suffrage is taken as the indication of popular sovereignty. Not more than one fifth of the population in any modern state are voters, and within that number a majority would be but little more than one tenth of the entire citizen body. Besides, these cannot all express their will, and hence must choose officials and representatives. Unless a perfect and constant system of initiative and referendum be maintained, the control of the people over the government which they have created is very slight. The machinery that they form to enable them to govern themselves takes the power out of their hands. Evidently the number of people who are sovereign is, from this standpoint, indefinite.

There is a still more fatal objection to this theory. It destroys the whole legal value of sovereignty. If by *state* is meant a people organized by means of a government which makes and enforces law, some organization and some method of government is the legal one, otherwise no state exists. Any attempt to make or enforce law except by legal means is not an act of the sovereign, but is an illegal revolt. The people can exercise sovereignty only through legal channels, in which case they cannot exercise it at all; or through a revolution, in which case sovereignty is being relocated and will reappear in another form, since permanent revolution would destroy the state. Hence the sovereignty of the people is, in time of peace, nothing more than public opinion; in case of a contest, only the "might of revolution," — not a legal power but a revolt against the existing sovereign. Such sovereignty could be exercised only by a constant series of revolutions or by a constant system of initiative and referendum, practically unworkable. Sovereignty of the people is, in fact, by the very definition of the state, a contradiction in terms.

At the same time the concept of popular sovereignty contains

several ideas of value. While sovereignty, in a legal sense, is not located in the people, they are potentially the ultimate check on the sovereign because of the possibility of revolution; and in the gradual formation of common law and its enforcement by the courts, when demanded by public opinion, the people approach the direct exercise of lawmaking power. Moreover, the tendency in modern states is to organize the state and locate sovereignty in such a way as to enable public opinion to express itself in a legal way as readily as possible. This development is ordinarily called the growth of democracy; and some of its most important devices are the widening of the electorate, proportional representation, responsibility of government to majority party, frequent elections, local self-government, and the use of initiative and referendum. By these and similar means a satisfactory relation is maintained between the mass of the people and the government, and the danger of revolution is minimized. *Constitutional* government is valuable, since it prescribes definite ways by which the state will exercise its sovereign power, thus protecting citizens from arbitrary action, such action being illegal. *Popular* government is valuable, since it provides means through which the wishes of the people may be known, with the probability that these wishes will be considered by the state.[1] It is true that, in modern constitutional democratic states at least, the border line between public opinion and sovereignty is indistinct, and points of contact are numerous.

50. Sovereignty as constitution-making power. According to this theory sovereignty is located in that body of persons who may legally make, or, what is essentially the same, may amend the constitution of the state. Such a conception is often called *legal* sovereignty, as distinct from the ultimate force or *political* sovereignty, which may be conceived as vested potentially in the people. Its point of view may be expressed as follows: The fundamental form of a state is called its constitution. This collection of principles creates government, outlines its powers, and adjusts the relation of the state to its citizens. Hence the government is limited in its powers by the constitution, and is inferior in authority to the body that may create or change this fundamental

[1] Willoughby, The Nature of the State, p. 302.

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document. There is no higher authority possible than that which creates the constitution. That authority expresses the direct will of the state and is therefore sovereign. In applying this principle to specific states it would be found that in England sovereignty is located in Parliament, i.e. in King, Lords, and Commons. Legally it is supreme and its acts cannot be questioned. No authority exists to declare its acts void, and no statute or official is exempt from its jurisdiction. In France the Senate and Chamber of Deputies in joint session have similar powers. They represent the highest legal authority in the state and may alter its fundamental laws. In Germany changes in the constitution follow the ordinary course of legislation, except for the larger majority required in the upper house, and the right of each commonwealth to veto changes which concern its own specific rights. The Constitution of the United States may be amended in any one of four ways, since amendments may be proposed by two thirds of both houses of Congress, or by a convention called by Congress at the request of the legislatures of two thirds of the commonwealths, and may be ratified by the legislatures of three fourths of the commonwealths, or by conventions in three fourths of the commonwealths, Congress having the right to determine one or the other method of ratification. In all modern states, therefore, some organization of the state, back of the government and more or less distinct from it, may be conceived. In the United States this distinction is quite clear; in England it exists merely in the nature of the laws with which Parliament deals; but in any state, wherever the ultimate power of constitution-making is found, there legal sovereignty exists.

Although this theory, logically based on the modern conception of sovereignty, bears legal scrutiny and is accepted by many, several serious objections may be urged against it. These constitution-making organs act intermittently and at infrequent intervals, in some cases never, while the sovereignty of the state is being constantly exercised. It seems scarcely logical to consider sovereignty, the life and essence of the state, as lying dormant or latent. Besides, sovereignty, as a question of fact, deals with the organs that express the state's will *now*, not with the original

revolutionary source of authority by which the people, in creating the state, established its government. Finally, such bodies, when they do act, are really a part of the government. They must be put in motion by the government, and are only special organs of government, having special functions, in many states the only difference from ordinary organs being in the manner of procedure or in the majority required. In so far as a constitution-amending body is distinguished from the regular organs of government, its power is specifically limited to the creation or the ratification of properly proposed constitutional amendments. It is thus a special organ which, according to the fundamental organization of the state, has the legal right to redistribute the total exercise of sovereign powers among the various organs of government. It has no further powers, and it must act only in the manner legally prescribed.

51. Sovereignty as lawmaking power. From this point of view sovereignty is located in the sum total of all lawmaking bodies in the government, provided these act within the scope of their legal competence. Since the expression of the state's will is its highest manifestation of power, all those bodies that share legally in expressing that will are exercising sovereignty. By this is meant not legislatures alone, but all the organs of government except those that are purely administrative, such organs being merely the agents of the sovereign. In some cases the same organ may at one time be expressing the state's will, and at another time administering it: in the first case exercising sovereign power; in the second, not. For instance, lawmaking bodies include:[1]

1. *Legislatures.* National, commonwealth, or local.

2. *Courts.* In so far as they create law, not when merely interpreting or applying existing law.

3. *Executive officials.* In so far as they create law, by ordinances, proclamations, etc.

4. *Conventions.* When acting legally as lawmaking bodies, as in the case of a constitutional convention properly assembled.

5. *Electorate.* When exercising powers of referendum or of plebiscite.

[1] Willoughby, The Nature of the State, p. 303.

In all these cases it must be remembered that the bodies exercise such powers and proceed in such manner only as the fundamental laws of the state provide, though these laws may be changed in a legal way if it is so desired. Under these conditions the aggregate of lawmaking bodies constitutes the depository in which the state's sovereignty is located.

This theory considers the state as a unit and its government as a unit. Each state is completely organized in its government, and the government includes the total organization of the state, bodies which act infrequently and irregularly, as well as those that act frequently and regularly, being included. It makes no distinction between constitutional law and statute law, or between the various separations or divisions of government. All parts of the government, acting within their legal sphere, are equal; and all combined form the organization of the state. Sovereignty is thus considered as the "daily operative power of framing and giving efficacy to laws. . . . It lives, it plans, it executes. It is the organic organization by the state of its law and policy; and the sovereign power is the highest originative organ of the state."[1] In many respects this is the most satisfactory solution of this difficult problem. It combines the strongest points of the other two theories and adheres most closely to actual facts. Like the popular-sovereignty theory, it recognizes that, in modern democratic states, sovereign powers are widely distributed and exercised by large numbers of the state's citizens. Like the constitution-making theory, it recognizes that sovereignty is a legal concept and can be exercised only through legal channels and in a legal manner. It avoids the vagueness and loose thinking of the first point of view; at the same time it steers clear of the legal abstraction, which, in the second, by pushing sovereignty too far back, almost destroys its existence.

52. Revolution. Revolution may be defined as a relocation of sovereignty. If unsuccessful, the attempt is called a rebellion. As sovereignty has both an external and an internal aspect, so revolutions may either adjust the outward relations of states or may alter their internal organization. The most common example of external revolution occurs when part of a state separates itself from the

[1] Wilson, An Old Master and Other Essays, p. 87.

remainder and establishes itself as an independent state. In this case two sovereignties exist where formerly there was but one. The separation of the American colonies from England, and of the South American republics from Spain, are examples.

While not so considered in ordinary thinking, the merging of sovereignty, by which formerly independent states become one state, is in essence also a revolution. From a political standpoint, what actually takes place is a destruction of the old state sovereignties and the creation, as a national people, of a new state. Of such relocations of sovereignty the formation of the United States and of the German Empire are examples. Both the separation of one state into several and the incorporation of several states into one may take place by either peaceful or violent methods. In all cases some sovereignty is destroyed and new sovereignty created.

An internal revolution occurs when sovereignty is relocated within a state. Such revolutions may be of three kinds : [1]

1. Anarchical, directed to the destruction of existing legal organization, without definite aims as to the political future.

2. Constitutional, aiming to reorganize the state and establish a new form of government.

3. Governmental, aiming to change the personality of the government or to resist some governmental measure, either because it is illegal or because, though legal, it does not coincide with existing political thought.

In its broadest sense a redistribution of sovereignty is almost constantly taking place, as the organization of the state adjusts itself to changing conditions. Sometimes, however, it happens that organization remains stationary until a great discrepancy exists between actual conditions and legal forms. The sudden change, peaceful or violent, that readjusts affairs is illustrated by the French Revolution and the English Revolution of 1688.

It must be remembered that sovereignty is a question of fact. As soon as a power is able to enforce its commands without itself obeying any higher authority, it is sovereign, in spite of the continuance of legal fictions, such as the power of the crown in England or of the electoral college in the United States. On the other

[1] Amos, The Science of Politics, pp. 430–431.

hand, potential sovereignty is not sovereignty until it is in fact exercised. The "might of revolution" must be put into operation before sovereignty can be relocated. Even then it may be difficult to distinguish the real sovereign, as the distinction between *de jure* and *de facto* governments indicates. The final test of sovereignty will be its ability to exercise unquestioned authority over its own citizens, and its recognition by other states.

That authority which is in fact supreme and which receives the obedience of the mass of the people in the state is the actual or *de facto* sovereign. This sovereignty may rest on no legal basis, but may depend upon physical force or religious influence. The authority of Cromwell in England and of Napoleon in France rested on revolution and force, not upon law, yet they exercised *de facto* sovereignty. The Continental Congress that directed the American Revolution, and the French assembly that concluded the war with Germany in 1871, were not legally created governing bodies, yet under the pressure of necessity they exercised full powers of sovereignty. When such sovereignty gives evidence that it can maintain its power it is morally entitled to receive obedience from within the state and recognition from other states, regardless of the nature of its origin. Obviously, such sovereignty, if it be permanent, will ultimately acquire a legal status, either through the regular legal channels or through the tacit acquiescence of all parties concerned.

On the other hand, *de jure* sovereignty depends for its validity not upon the actual obedience rendered to it, but upon its legal right to command obedience. Such sovereignty, at one time real and powerful, may be displaced by force or may go to pieces through internal disorganization, but it has a legal claim to existence until the *de facto* sovereignty acquires a permanent and organized status. From the standpoint of England she possessed a *de jure* sovereignty over the American colonies until the treaty of 1783 granted them independence. William the Conqueror became a *de jure* ruler in England not by his conquest, but by his election at the hands of the English people.

Unless the *de facto* and *de jure* sovereignties coincide there is constant danger of revolution, since those who possess the actual

power are naturally unwilling to submit to a decadent and powerless legal authority; and, on the other hand, mankind has a deep-rooted objection to authority that rests on force alone without legal sanction. Political expediency demands that sovereignty shall possess a legal status and at the same time be able to maintain itself by actual force. At any given time there is of course but one sovereignty in a state, although in time of revolution it may be difficult to determine just where that sovereignty is to be found. It must also be remembered that real or *de facto* sovereignty is never "unlawful," since the sanction of all law rests ultimately upon such sovereignty as exists, no matter of what nature that sovereignty may be.

OUTLINE OF CHAPTER IX

REFERENCES

RELATION OF STATE TO INDIVIDUAL

NATURE OF CIVIL LIBERTY

1. CIVIL LIBERTY
2. NATIONAL LIBERTY
3. POLITICAL LIBERTY

GUARANTEE OF CIVIL LIBERTY

1. AGAINST THE GOVERNMENT
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CONTENT OF CIVIL LIBERTY

1. FREEDOM OF THE PERSON
2. EQUALITY BEFORE THE LAW
3. SECURITY OF PRIVATE PROPERTY
4. FREEDOM OF OPINION AND OF ITS EXPRESSION
5. FREEDOM OF CONSCIENCE

POLITICAL LIBERTY

CHAPTER IX

INDIVIDUAL LIBERTY

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53. Relation of state to individual. The proper relation between the individual and the various social organizations of which he is a member has long been a problem on which great thinkers have differed. Whether the individual or the organization is the true unit, and should be developed at the expense of the other in case of conflict, is a controversy that has affected industrial, social, and political relations. From the political standpoint there is, on the one hand, the doctrine that the state is a necessary evil; that it should do nothing except maintain peace and order, and thus give equal opportunity for individuals to develop according to their ability. On the other hand is the belief that the state should exercise large powers and subordinate the individual to the interests of the whole.

The best adjustment of individual and state activity, and the proper scope of state functions, will be discussed in the latter part

of this volume.[1] At present the question of individual liberty will be viewed in its relation to the sovereignty of the state. The preceding chapter emphasized the fact that in every state some authority must exist, supreme over the will of any individual or association of individuals within the state. This is called sovereignty. From the standpoint of the individual, however, the purpose of the state is to secure to each individual conditions for his highest development and freedom. Apparently there is a fundamental contradiction between sovereignty and liberty. If the authority of the state be absolute, how can liberty exist; if the individual has liberty, what has become of sovereignty? Sovereignty alone is despotism and destroys liberty, while liberty alone is anarchy and destroys sovereignty. The efforts made by states to reach a satisfactory compromise between these two equally undesirable extremes comprise a large part of the history of politics, and no permanent solution has yet been reached. However, a more careful analysis of individual liberty will show its real nature and prove that, instead of being opposed to sovereignty, it is dependent upon it. In fact it is possible only if sovereignty exists, and becomes more perfect as sovereignty is more completely organized.

54. Nature of civil liberty. A century and more ago men spoke much of natural rights. Life, liberty, property, the pursuit of happiness, and other similar privileges were considered inalienable rights under the laws of nature. A condition of perfect liberty, existing before governments arose, was conceived, often with a sigh of regret that this "state of nature" could not last forever. Analysis shows the fallacy in such thinking. In a state of nature liberty would be impossible. Each person would have "rights" only as he could secure them by force. "Natural rights" of one would encroach upon the "natural rights" of others, thus destroying the liberty of all. That every person could have liberty to do as he chose in all things is obviously absurd. In such a condition only one person could have absolute liberty, and he would be all-powerful.

The greatest liberty possible is the right to do as one pleases while encroaching least on the wishes of others. This secures the

[1] See Part III.

largest amount of liberty for all. Liberty in society, or civil liberty, has therefore both a positive and a negative side. It includes right to free action and immunity from interference; but in order to maintain such a condition some authority is needed that can set bounds to the liberty of each and enforce the rights of all. The organization that arose for this purpose is the state. It is therefore the only source of real liberty. Since it is sovereign over all, it alone can create and enforce rights and obligations. Evidently, then, the individual can have no rights or immunities against the state. The state takes his life as a penalty for offenses against its laws, or, if needed, in war. The state takes his property in the form of taxes; his pursuit of happiness must not run counter to similar pursuits on the part of his neighbors. As population grows and society becomes more complex, the relations of man to man need more constant safeguarding, and the liberty of each is more restricted for the best interests of all.

The state, then, is the only source of civil liberty. Its sovereignty alone enables rights to exist. Its laws are not only limitations on the freedom of individuals, but they are the only guarantees and defenders of individual freedom. Anarchy, instead of creating absolute freedom, would destroy it. Sovereignty and liberty are not contradictory terms, but correlative, — the same thing viewed from different aspects, the former from the state's point of view, the latter from that of the individual.

In common usage several other meanings of the term "liberty" have helped to cloud its real political connotation.

1. It is sometimes used in the sense of national independence, — of freedom from control on the part of other states. Thus the United States won liberty from England, or the South American republics from Spain. The term "*national* liberty" is sometimes used to indicate this meaning. Evidently this is a question of sovereignty in its external aspect. A new state has arisen and in its hands rests the creation of individual liberty for its citizens.

2. Sometimes liberty is used as a synonym for democracy, or popular government. Other things being equal, a government controlled by the masses will better safeguard the interests of all than a government in the hands of a class or of a few; but this is

not necessarily true. A benevolent despot may grant more civil liberty to his subjects than a democracy that disregards the wishes of a minority. *Civil* liberty consists of the rights and privileges that the state creates and enforces, not of the share that the individual has in political power. This latter may be termed *political* liberty, and is dependent upon the location of sovereignty and the organization of government in each state.

55. Guarantee of civil liberty. A further analysis of the individual liberty that the state creates and safeguards shows it to be twofold. The individual is protected by the sovereignty of the state:

1. Against the government.
2. Against other individuals or associations of individuals.

Against the government the individual is protected directly by the state, which creates the government and outlines the scope of its powers. Against other individuals or associations of individuals protection is indirectly given by the state through the government. On its negative side individual liberty consists of exemption in a certain sphere against encroachment on the part of the government, except in the legal method and to the legal extent prescribed by the state. On its positive side individual liberty consists of rights to exercise certain prerogatives, and to call upon the government to maintain these rights against any other individual or association of individuals. From the standpoint of immunity against the government, individual liberty is created by public law; from the standpoint of rights against other individuals, it is created by private law. In the latter case the government is merely an arbiter, in the former it is itself a party.

The contents of this private law that regulates the dealings of man with man, and the method of its creation and enforcement, are, in the main, similar in all advanced states, and will be discussed in a later chapter on law.[1] Modern states differ, however, in the legal guarantee that their citizens possess against encroachment on the part of the government; and this aspect of individual liberty needs further consideration. Every fully organized political community possesses a body of fundamental principles, written or

[1] See Chapter X.

unwritten, called a constitution. In accordance with these principles the state is organized; that is, its government is created, the scope of its powers and the manner of their exercise being broadly outlined. By this means also the sphere of individual liberty, in so far as immunity against the government is concerned, is indicated, since those powers forbidden to the government remain to the individual. Consequently the manner in which this adjustment of powers may be modified and the authority of government exercised, determine the legal guarantee which the individual possesses against governmental encroachment. In other words, the method of constitutional amendment and the separation of powers within the government are of importance, since they determine whether there is an organization back of the ordinary government that may limit its powers; whether one part of the government may protect the individual against another part; or whether individual liberty is at the mercy of the government, consisting of such immunities alone as the government itself may see fit to grant.

In applying this analysis to leading modern states it is found that in England and France the authority of the legislature is final. Against it the individual possesses legally only such immunity as it chooses to grant. It may alter the constitution; its actions cannot legally be questioned; and the judiciary that interprets its laws is at its mercy, since it may abolish the judicial department or modify the tenure of the judges. In both England and France the legislatures, by statute, have marked out a large sphere of individual liberty, but they may legally abolish this at any time. In France, moreover, the individual has no legal protection against executive encroachment, since the courts that decide disputes between individual and administration are controlled by the executive power. In England the individual is protected from executive encroachment by the judiciary, since judicial tenure is independent of the executive power. In Germany and the United States certain spheres of individual liberty are created by their constitutions, and, therefore, may not be legally violated by any department of the government. In the United States the federal courts, created by the constitution, protect the individual in this sphere against

both legislative and executive encroachment. Back of this is the power to amend the constitution itself, which may be exercised independent of the ordinary government, and which protects the individual against all its departments. The new constitution of the German republic contains the most elaborate bill of rights in any existing state. While the constitution does not specifically grant to the courts the power to set aside laws that encroach upon the constitutional rights guaranteed to the individual, it does provide for the impeachment before the supreme judicial court of the president, chancellor, and ministers for any wrongful violation of the constitution. In addition, a constitutional amendment may be proposed and voted by the people regardless of the lawmaking bodies, so that civil rights seem amply protected.

In conclusion, it must be noted that the actual freedom which the individual enjoys against governmental action is very similar in all these states, although legal guarantee against arbitrary action on the part of various departments of government differs. Moreover, it does not follow that the state that establishes the most perfect legal safeguard against governmental encroachment gives the greatest amount of liberty to its citizens. Civil liberty in England, though created by the legislature and legally at its mercy, is actually wider in scope than that granted by other states possessing constitutional limitations on governmental authority.

56. Content of civil liberty. In so far as individual liberty consists of rights and immunities created and maintained by the state against other individuals, it has existed from the beginning of political life. The adjustment of man's relations to his fellows was indeed the chief purpose for which the state arose. Further development consisted in making these rights more definite, in making governmental enforcement of them more certain, and in extending equal rights to all classes in the state. Definite law, sure enforcement, and equality before the law marked the advance of better organized sovereignty and of more complete liberty.

In so far as individual liberty consists of immunity from governmental interference, it is of comparatively recent origin. In ancient states the whole sovereign power was vested in the government. Theocracy and despotism crushed individual will, and

all the activities of man were subject to state control. In the Middle Ages governing authority resulted from ownership of land, and, as in the ancient empires, liberty existed only in so far as rulers permitted. It was not until modern constitutional states arose that the idea of individual liberty as a sphere into which the government might not enter, became possible, and that legal checks were placed on the manner and extent of governmental action.

The elements that compose individual liberty have varied in different states and at different times. In general the growth of popular government has been accompanied by an expansion of civil liberty, and corresponding limitations on governmental authority have secured individual welfare and stable organization. In the more advanced modern states the scope of individual liberty, in spite of legal differences in the nature of its guarantee, is practically the same. Stated broadly, it includes: [1]

1. Freedom of the person
2. Equality before the law
3. Security of private property
4. Freedom of opinion and of its expression
5. Freedom of conscience

Making due allowance for minor differences in various states, and for such limitations as general welfare demands, these may be considered as rights with which present political thought believes government should not interfere. All of these have developed gradually; some will probably be extended, others may be narrowed; but, in general, states agree that a certain field of individual liberty is conducive to the best interests of both citizen and state.

57. Political liberty. As already indicated, the great problem that the state, in its evolution, has faced is a satisfactory adjustment of sovereignty and liberty. Upon its solution both individual welfare and state existence depend. The ideal condition requires a sphere of civil liberty sufficient to secure individual interests, and a government whose commands are definitely expressed and

[1] Burgess, Political Science and Constitutional Law, Vol. I, p. 178.

authoritatively enforced. At the same time there must be the minimum amount of friction between government and citizen, in order to maintain the stability of the state. Various political methods and devices have been tried in the effort to combine authority and freedom; but usually they have tended toward despotism or toward anarchy; and the state, from stagnation, or revolution, or conquest, has perished. The system that thus far has been most satisfactory places sovereignty and liberty in the same hands; that is, it gives the mass of the people not only a sphere of freedom, but also a share in authority. Thus they, directly or indirectly, as government, create and enforce the rights which they possess as citizens, — in a word, they govern themselves. This type of political life is called democracy, and the right to share in authority is called *political liberty* in distinction to *civil liberty*, which is the right to protection against interference.

The establishment of political liberty has been the most important contribution to recent political growth. Internal order and freedom from external danger had been secured by the powerful organization of Rome; but the absence of local self-government and representation created a great gap between government and citizen, and destroyed liberty. With the coming of the Teutons extreme liberty or anarchy prevailed, and it took a thousand years to restore organization and authority. By the sixteenth century government was again powerful, but a conflict of interests between kings and people still prevented liberty. At the same time a new force in politics was growing. Increasing political consciousness on the part of the people led them to realize their power and to demand a share in government. Since that time, by gradual process, as in England, or by revolution, as on the continent, constitutional democracy has developed.

It was soon realized, however, that the people needed protection against their representatives, and against hasty prejudices on their own part, as much as they had against their former despotic rulers. For this purpose authority was divided among various departments of government and each made a check on the functions of the others. In addition, by frequent elections, by the referendum, and by a system of local self-government, the mass of the people

retained a direct share in political power. Finally, by written constitutions, usually difficult to change, stability of organization was secured and a sphere of individual freedom, into which the ordinary government could not enter, was created. In this way modern states reconcile sovereignty and liberty. Political liberty as well as civil liberty is wide in extent, and the conflict between authority and freedom is largely avoided, since rights are self-created and self-enforced.

Political liberty is not as widespread or as equally distributed as civil liberty. All citizens share practically alike in protection against the government and against other individuals, and even aliens are often admitted to full privileges of civil liberty. But political expediency demands that a considerable proportion of the state's population be excluded from political rights, and that within the group possessing such rights considerable differences in degree of power be found. Civil liberty may be enjoyed alike by all; political authority must be concentrated in the hands of a relatively limited number.

OUTLINE OF CHAPTER X

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NATURE OF LAW

SOURCES OF LAW

1. CUSTOM
2. JUDICIAL DECISIONS
3. SCIENTIFIC COMMENTARIES
4. LEGISLATION
   - *a.* The nature of legislative authority
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BASIS OF MODERN LAW

1. ROMAN
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RIGHTS

1. PERSONS
   - *a.* Natural
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DIVISIONS OF LAW

1. AS TO MANNER OF STATEMENT
   - *a.* Statutes
   - *b.* Ordinances
   - *c.* Common law
   - *d.* Constitutional law
   - *e.* International law
2. AS TO THE PUBLIC OR PRIVATE CHARACTER OF THE PERSONS CONCERNED
   - *a.* Public law
     - (1) Constitutional law
     - (2) Administrative law
     - (3) Criminal law and procedure
   - *b.* Private law

LAW AND ETHICS

internal human action enforced by sovereign political authority."

CHAPTER X

LAW

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58. Nature of law. The term "law," in ordinary usage, is given a variety of meanings. It is often applied to the sequence of cause and effect in the world of phenomena. In this sense the laws of gravitation and of chemical reaction are examples. Again, the name "law" is applied to rules for the guidance of human conduct. If these are concerned with motives and internal acts of the will, they are called moral laws. If they refer to outward acts, they may be either social or political. In the former case they are enforced by public opinion, and their violation is followed by social disapproval. In the latter case they are enforced by the authority of the state, and their violation is followed by penalties politically determined and applied. It is law in this latter sense alone, usually known as *positive* law, with which political science deals. It considers law as a command issued by the state and enforced by its authority over all its citizens; or, as defined by Holland,[1] "a

[1] Elements of Jurisprudence, p. 40.

general rule of external human action enforced by a sovereign political authority."

A further analysis of law in this political, or positive, sense will more clearly establish its nature. As indicated in the discussion of sovereignty, creation and enforcement of law form the method by which states manifest their sovereignty in its internal aspect. Accordingly, no legal restriction can be placed on the lawmaking authority of the state; and, conversely, no authority except the state can create law. This seems clear enough when applied to law formulated by legislation, since in that process a definite state organ is seen deliberately expressing the state's will. Some difficulty is met, however, in applying the idea of positive law to those customs that are enforced by the courts; and this fact has led the Historical School to deny that law is always created by a definite sovereign body in the state. They claim that custom and popular consent, as well as definite political authority, create law. In the main their objections result from confusing the sources from which legal principles have sprung, and the sanction that enforces them. It is true that custom was for a long time the only source of law, and is still an important influence. At the same time, the principles handed down by custom do not become law, in the political sense, until sanctioned by the state. "The sole source of laws, in the sense of that which impresses upon them their legal character, is their recognition by the state, which may be given either expressly through the legislature or the courts, or tacitly by allowance, followed in the last resort by enforcement." [1]

Enforcement by the state is, then, the distinguishing characteristic of law. From this it follows that all laws are equal in validity. Each lawmaking organ, acting within the sphere of its legal competence, shares in exercising sovereign power. The sum total of these bodies forms the sovereign; the sum total of the principles they enforce forms the law of the state. An ordinance issued by some minor department is, if the issuing body has a legal right so to act, as truly law as legally created constitutional amendments. When a law is declared unconstitutional it is not meant that the law, conflicting with a superior law, is annulled; but that, created

[1] Holland, Elements of Jurisprudence, p. 54.

by a body acting outside the scope of its legal powers, it never was law. Law may therefore be defined as the command of an authorized public organ acting within the sphere of its legal competence. This views every state as completely organized in its government, and gives a clear-cut meaning to sovereignty and law.

59. Sources of law. Law, as the expression of the state's will, follows the same general course of development as the state itself. A historical survey of the manner in which legal principles have arisen will therefore both add clearness to our knowledge of state evolution and further explain the nature of law. The sources of law may be outlined as follows:

1. *Custom.* Rules of conduct resting upon general acceptance, resulting either from accidental habits, from evident utility, or from general desire for order and justice, were the only laws known to primitive man. To the sanction resulting from immemorial usage was added religious authority, since law and religion were not distinguished and all rules rested upon the same sanction. Evidently no direct action of the state was involved in the creation of such principles. As long as social relations were simple and common interests few, all knew the common rules; and the personal violence that resulted from nonobservance was not a serious menace to such order as then existed.

Under changing conditions, however, such as resulted from new environment, new methods of life, or contact with other peoples, several difficulties arose. More numerous controversies led to doubts as to the relative validity of conflicting customs, and new cases came up concerning which custom furnished no rule. The evils of uncertain public opinion and the injustice of the strong when customary rules were absent led to an additional source of law, namely,

2. *Judicial decision.* The state arose not as the creator of law, but as the interpreter and enforcer of custom. Disputed points were referred naturally to men of recognized importance, who had authority to enforce their decisions. In this way the magistrate or judge, supported by the force of the community, inaugurated political power. While, in theory, each case was decided on its

merits by applying long-standing custom, in several ways the decisions of magistrates created new law. In deciding similar cases general rules were established, precedent was followed, and, either unconsciously or deliberately, the law was modified and expanded. Under changing conditions former customs worked injustice, and decisions often created new principles by means of strained constructions or legal fictions. Finally, where no rule existed, general principles of equity were applied, still under the guise of judicially interpreting laws already in existence. The decisions of the Roman prætor and of the English chancellor are examples of law thus created. In these ways, as social life developed, the strictness and rigidity of old customs were modified, the functions of the state were extended, and its authority was made more definite in expression and more certain in enforcement.

3. *Scientific commentaries.* The carefully formed opinions of great jurists have often been considered decisive, as in the authority of the Roman jurisconsults, or the modern respect for Coke, Blackstone, and Kent. In other ways their influence has been great, if less direct. What lawmakers and courts deal with in piecemeal fashion legal science views as a complete system capable of scientific treatment. By collecting and arranging in logical form past customs, decisions, and laws, writers on law are able to arrive at general principles which may serve as a basis for further enactment, to indicate the gaps that need filling in, and, in so far as their ideas are enforced by the courts, to create law.

4. *Legislation.* The idea of deliberately creating law, the most important function of modern states, is comparatively recent. Two lines of growth in its development may be noted :

(a) The nature of legislative authority. At first magistrates and priests alone could create law. Representing the power of God or the majesty of the state, father and king, or, later, prætor and archon, were lawgivers. In the Roman Empire the emperor was the source of all law ; when national states arose their kings claimed the same prerogative, and in some states to-day, in legal phraseology at least, laws are issued by the crown. During this process assemblies of freemen, whose consent and support were needed on important questions, gradually established themselves

as part of the government, and by various methods secured the right to initiate, as well as indorse, new laws. The assemblies in Greece and in Rome and the early Teutonic moots represented this stage. Finally, the system of representation, begun in England, furnished a device that enabled the growing idea of popular sovereignty to manifest itself effectively; and, in modern states, legislation is controlled by representative bodies.

(b) The nature of law. For a long time the lawmaking powers of government dealt almost entirely with public law, adjusting the relation of citizens and state, and leaving the regulation of the private interests of individuals to custom and the judiciary. Only gradually, even after representative assemblies arose, did they attempt more than a general control of public administration. However, as the basis of representation widened, and the people, in their growing political consciousness, realized their power, it was inevitable that, through their representatives, they should enter on a constantly extending field of legislation. Private as well as public interests were regulated, other lawmaking bodies with delegated powers were created, and the present enormous legislative activity was begun. The growth of popular representative government and the idea that the state manifests its sovereignty in detailed legislation are closely interrelated.

At present legislation is almost the only source of law. Custom and equity are being replaced by definite enactment; judicial decisions are limited by codification, and scientific commentary does little except discuss cases. While the other sources are present, they tend increasingly to be swallowed up in legislation. Rigid custom, which, when unaltered, caused ancient states to stagnate, has been replaced by a craze for lawmaking, which sometimes threatens to go too far in the other direction. At the same time custom still serves as a check on radical action. Laws no longer needed become obsolete, usages grow up outside the legal system, and public opinion constantly influences both the formulation and the administration of law. Traditions of the past, as well as needs for the future, affect the creation of law.

60. Basis of modern law. Modern systems of law arose from the fusion of Roman and Teutonic polity after the barbarian

invasions of the fifth century.[1] Though somewhat influenced by Roman civilization before entering the Empire, Teutonic legal ideas showed marked contrasts to those of Rome. The chief differences may be summed up as follows: To the Romans law meant the commands of the state issued through its officials; among the Teutons immemorial custom of popular origin was law. Roman law was based on allegiance to the state; Teutonic law rested on personal allegiance. Over the Roman Empire a uniform law was enforced on all citizens; among the Teutons law was a personal possession, differing from tribe to tribe, and taken, as a part of his belongings, wherever its owner might go. To the advanced but rigid Roman code the Teutons therefore contributed new elements and the possibility of further growth. The immediate result of contact was legal confusion. Numerous systems, often contradictory, existed side by side. The Teutons, retaining their customs, made little effort to destroy the old laws of the Empire. In addition, by the canon law of the church and the local regulations of manor and guild, legal ideas as to both sanction and content were further complicated.

Gradually, however, Roman methods systematized this mass of custom. Several means by which Roman law was diffused over Europe may be mentioned. During the Dark Ages various codes, containing, in the main, Roman principles, were drawn up at the command of barbarian leaders. Of these the most important was the code of the Visigoths, known as the Breviary of Alaric. This compilation, prepared early in the sixth century, remained the chief source of Roman law for Europe until the eleventh and twelfth centuries. About that time, in the Italian cities where population was mixed and trade vigorous, need arose for more comprehensive regulation. In the great compilation of Justinian was found a system suited to the needs of the time, and schools were rapidly established for its study. Starting in the University of Bologna, in the latter part of the eleventh century, interest in Roman law spread to other Italian cities, thence to France and Spain, and later to Holland. Even in England the study of Roman law obtained for several centuries. From these schools

[1] Wilson, The State, chap. v.

lawyers, steeped in Roman ideas, returned to their homes, and, supported by the kings, whose desire for centralization they favored, soon replaced customary rules with Roman principles and procedure.

To this process the influence of the church must be added. In organization and spirit it was Roman. It had a well-developed system of canon law and courts; and, by its control of education, it furnished the advisers of rulers and the compilers of codes. Its authority was therefore cast on the side of Roman methods, particularly in family relations and inheritance. The prevalence of Latin as the speech of education and of business also furthered the acceptance of Roman legal ideas.

As the countries of continental Europe arose from feudalism Roman law increasingly served as the basis for their national unity. Attempts to secure uniformity and to enforce the king's law as the law of the land, the growing influence of lawyers, trained in Roman law, as the popular courts decayed, and the influence of the church all tended in the same direction. Everywhere evidences of fusion may be found, but in general the legal systems of continental Europe rest on Roman jurisprudence. A most direct influence was exerted by the Code Napoléon (1804). This consisted of the ancient customs of France, of Roman law maxims, and of the principles and legislation of the French Revolution, revised and harmonized by a commission of eminent French jurists. By French control and influence this code was introduced into Holland, Italy, Spain, and many of the German states. Austria and Prussia imitated it, and from Spain it spread to Spanish America. England, cut off from the rest of Europe, and possessing, from the Norman Conquest, a centralized administration, was able to work out a uniform legal system based on Teutonic customs. Even in England the influence of Roman law was felt. For four centuries England was governed as a Roman province; later, Roman law was taught in her universities; and many precepts and methods were brought from Rome through the church. At the same time, English law and the law of those states, such as the United States, that have derived their jurisprudence from English sources, are essentially based on the customary usages of the early Teutons.

It should be noted also that important Hebraic elements have been introduced into modern law, particularly at two periods. During the Middle Ages the union of church and state and the important governing functions that the church performed, resulted in a considerable mingling of Christian theology with politics. Again, after the Reformation, Protestant ideas, particularly those of the Puritans, were infused into politics and influenced the growth of modern democracy.

In conclusion it may be noted that, in general, Teutonic principles predominated in public law; Roman, in private law. The Teutons, as conquerors, formed their governments on the basis of those customs with which they were familiar, laying the foundation for local self-government and representation. Even where Roman ideas were adopted later these elements were never completely destroyed. On the other hand, Roman law was soon applied to relations among individuals. It was along this line that Rome had most perfectly developed her system, and its superiority, especially under their new environment, was soon recognized by the invading Teutons. In municipal and colonial administration, also, the influence of Rome was powerful. With these the Teutons were not familiar, and their customs were accordingly silent. On the contrary, Roman ideas remained least changed in the towns; and toward the close of the Middle Ages, when city life again became important, Roman municipal government reappeared. Later, when colonial empires were formed, it was again to the experience of Rome that the states of Europe unconsciously turned. Finally, many survivals in political point of view may still be observed, distinguishing those states whose jurisprudence is predominantly Roman from those whose legal ideas are fundamentally Teutonic; and these differences can be explained only by the historic development of their respective legal systems.

61. Rights. When the "general rules of external human action enforced by sovereign political authorities," called laws, are applied to individuals, it is seen that the state sanctions only such acts as are in accordance with its will, and punishes, or at least nullifies, acts contrary to its will. In other words, the state announces what it will protect as legal rights, what it will enforce as legal duties,

and what method it will use in so doing. The maintenance of rights, with their corresponding duties, is, therefore, the object for which law exists.[1] That law which creates rights is called *substantive* law, while that law which provides a method of protecting rights is called *adjective* law, or *procedure*.

In discussing individual liberty[2] the nature of a legal right was indicated. There remain to be considered its component elements, which are :

1. The person who possesses the right, or who is benefited by its existence.

2. In some cases, the object over which the right is exercised.

3. The acts or forbearances which the person possessing the right is entitled to demand.

4. The person from whom these acts or forbearances can be exacted, or whose duty it is to act or forbear.

In this series two terms are persons, — one entitled by the right, the other obliged by the right. The other terms may be called the thing and the act. When a right is put into operation, events, which occur independent of the persons concerned and yet which influence the right, may intervene.

The final analysis of a legal right, therefore, shows :

1. *Persons*. Either human beings, called *natural* persons, or groups of human beings or masses of property to which the law gives rights and duties, called *artificial* persons. Corporations and the state itself are examples of this latter class.

2. *Things*. Either material objects, such as real and personal property, or intellectual objects, such as a patent or copyright.

3. *Facts*. These may be :

(a) Acts. Deliberate outward actions or deliberate forbearances from action.

(b) Events. Movements of external nature or the acts of persons other than those concerned with the right.

This analysis opens up the whole field of law and serves as the basis for its division into (1) law of persons, and (2) law of things, which some writers, such as Blackstone and Austin, consider the fundamental classification of law.

[1] Holland, Elements of Jurisprudence, chaps. vii, viii. [2] See Chapter IX.

62. Divisions of law. Law may be classified on the basis of numerous canons of distinction. For the purposes of political science several of these are important as indicating more clearly the nature of state, sovereignty, and law:

1. *As to the manner of statement.* If the entire body of legal principles in a modern state be analyzed, it will show the following elements, differing in the main as to the mode in which, or the persons through whom, it has been formulated:

(a) Those principles that have been formally enacted by the legislative bodies of the state. These form the bulk of existing law and are called *statutes*.

(b) Those "commands of limited application not necessarily permanent, and usually issued as administrative directions by some department of government."[1] These are called *ordinances*.

(c) That body of legal principles that is enforced by the courts, but whose origin rests on custom rather than on formal legislation. This is called *common law*.

(d) Those fundamental principles that create government, outline the scope of its powers, and prescribe the method of their exercise. In some states at least these, when written, are not formulated by the ordinary lawmaking body and cannot be altered by ordinary procedure. They form *constitutional law*.

(e) Those general rules that are observed by states in their dealings with other states are called *international law*. These, as will be seen later,[2] differ from the preceding not only in manner of statement but also in sanction, and are not to be considered law in the proper sense of the term.

A fundamental cross-classification of law rests on a distinction already indicated between the relations of man to man, and of man to the state. Consequently law may be classified:

2. *As to the public or private character of the persons concerned.* From this standpoint the basic division is into:

(a) Public law, which regulates the relations of state and individual.

(b) Private law, which regulates the relation of individual and individual.

[1] Willoughby, The Nature of the State, p. 214. [2] See section 68.

In public law the state is directly, or indirectly through some part of its government, one of the parties to the right created by the law, at the same time being the power that creates and enforces the law. If the individual is the offender, the state may of course protect its rights. But if the state is the offender, the individual may protect his rights only with the consent of the state, since no rights can be *enforced* against the state. Public law deals with the organization and functions of the state, and with its relations to its citizens. Its most important subdivisions are:

(1) Constitutional law, which defines the organization of the state and outlines the scope and manner of exercise of governmental powers. In a word, it locates sovereignty within the state and thus indicates the source of all law.

(2) Administrative law, which defines in detail the manner in which the government shall exercise those powers that were outlined in constitutional law. Or, in a narrower sense, it is "that part of the public law which fixes the organization and determines the competence of the administrative authorities, and indicates to the individual remedies for the violation of his rights." [1]

(3) Criminal law and procedure. In maintaining order the state punishes injuries to itself and disobedience to such rules as it formulates for general welfare. That branch of law which defines the acts that infringe upon the rights of the state, and provides penal consequences, is called *criminal law*. That body of rules defining the method in which the machinery of the state is set in motion to punish offenders is called *criminal procedure*.

The idea of criminal law is comparatively modern. At first, offenses against the state were punished by special laws, and offenses against individuals, even if they threatened general welfare, were considered as private acts, to be avenged by individuals or compensated for by money payments. The state, entering as the arbiter that enforced fair play, later came to consider certain acts as offenses both against other individuals and against itself; and gradually a body of rules appeared concerning acts, both against the state and against other individuals, indirectly affecting

[1] Goodnow, Comparative Administrative Law, Vol. I, p. 8.

the general welfare. With this came the idea that it was the duty of the state to prevent and punish such offenses.

In private law both parties concerned are private individuals, while the state occupies the position of arbiter. It creates the law and enforces it impartially, thus securing to each citizen his rights against other citizens. Among its most important subdivisions may be mentioned the law of contracts, of property, of torts, of inheritance, etc. While forming a most important part of the science of law, a discussion of these topics has no place in political science.

Public and private law, taken together, are called *municipal* law, and are characterized by the presence of an enforcing authority. In public law the state is both an interested party and the enforcing authority; in private law the state is the enforcing authority only. In contrast to these laws, which regulate the relations of man to state and of man to man, may be mentioned the rules that regulate the dealings of state with state, called *international* law. For these, except as their principles are incorporated into municipal law, no enforcing authority exists; and, according to our definition, they are, properly speaking, not law. In a word, since the state is internally sovereign, municipal law *is* law; since the state is externally sovereign, international law *is not* law.

63. Law and ethics. Law and ethics, while closely related, must be clearly distinguished. The difference in sanction has already been indicated. Moral rules are enforced by individual conscience or by the disapproval of public opinion. Law is enforced by the power of the state. There is, however, a difference in content as well. Ethics deals with the whole life of man, his thoughts and motives as well as his actions. Law is concerned only with outward acts. Of these it attempts to control only such as affect the welfare of men in society, and as can be brought under uniform and practicable regulation. It necessarily follows that many things considered morally wrong are not prohibited by law. Falsehood, unless under oath or in fraudulent contracts, is immoral but not illegal. Ingratitude, jealousy, meanness, are indications of bad character, but do not come under the cognizance of law unless actual injury to others can be proved. On the other hand, law often follows standards of expediency, and things not considered

morally wrong are forbidden by law. Rapid driving is hardly immoral, yet in the congested streets of large cities it becomes a social danger and is prohibited. Peddling milk without a license involves no moral issue, yet is forbidden in most cities. There is, thus, a legal conscience as well as a moral conscience, and they do not always coincide. Some persons prefer to be martyrs to the law rather than to forsake their moral opinions; others disregard morality so long as they can keep on the safe side of the law.

There is, nevertheless, a close connection between law and ethics. In origin they were identical, both arising as the result of habit and experience in that primitive social life when moral and political ideas were not separated. Even after the state became a distinct institution, and laws, as definite sovereign commands, were distinguished from moral precepts, points of contact remained. Widespread ideas of right and wrong, representing prevalent ethical standards, always tend to be crystallized into law. To be effective, law must represent national habits and beliefs. Laws that attempt too soon to force new moral ideas, or laws that are no longer in touch with existing ethical conditions, are alike difficult to administer. The nonenforcement of temperance or child-labor legislation is an example of the former; certain ancient, but unrepealed, Sabbath observance laws illustrate the latter. In this sense law marks time to moral progress. There is always a mass of public opinion clamoring for legal expression, and a body of law becoming obsolete because inapplicable under existing conditions. Only such law as has the support of moral sentiment will be respected and obeyed, or, if necessary, efficiently enforced.

OUTLINE OF CHAPTER XI

REFERENCES

INTERNATIONAL RELATIONS

HISTORY OF INTERNATIONAL RELATIONS

1. FROM EARLIEST TIMES TO THE ESTABLISHMENT OF THE ROMAN EMPIRE
2. FROM THE ROMAN EMPIRE TO THE REFORMATION
3. FROM THE REFORMATION TO THE PRESENT TIME

SOURCES OF INTERNATIONAL LAW

1. ROMAN LAW
2. WORKS OF GREAT WRITERS
3. TREATIES AND CONVENTIONS
   - *a.* As to territory
   - *b.* As to sovereignty
   - *c.* As to conduct
4. INTERNATIONAL CONFERENCES AND ARBITRATION TRIBUNALS
5. THE MUNICIPAL LAW OF STATES
6. DIPLOMATIC CORRESPONDENCE: STATE PAPERS

PARTIES TO INTERNATIONAL LAW

1. SOVEREIGN STATES
2. NONSOVEREIGN POLITICAL ORGANIZATIONS
3. CORPORATIONS
4. INDIVIDUALS

NATURE OF INTERNATIONAL LAW

CHAPTER XI

RELATION OF STATE TO STATE

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64. International relations. Since sovereignty, the essence of the state, includes (1) absolute authority over all individuals within the state, and (2) absolute independence from all authority outside the state, it necessarily follows that there can be no coercive authority that binds two or more states. Such a condition would of itself destroy the sovereignties of the states, and therefore the states themselves. In actual fact, however, many things tend to bring states into closer relations. Common language and literature, common culture and science, common ideas of right and wrong, and especially the recent remarkable growth of trade and travel, — all these create ties of mutual interest and increase the dealings of state with state. As these bonds of union become more numerous the relations of states to one another, both in peace and in war, tend to conform more and more to a definite code. These rules which determine the conduct of the general body of civilized states in their dealings with one another are called international law.

65. History of international relations. While international law proper is less than three hundred years old, most of its fundamental principles had their origin in earlier periods, and some can be traced even to the political communities of Greece and Rome. International law, in its development, may be divided into three periods,[1] in each of which a certain idea of interstate relations predominated:

1. *From earliest times to the establishment of the Roman Empire.* States had no rights and owed no obligations unless of the same race.

2. *From the Roman Empire to the Reformation.* Relations of states must be regulated by a common superior.

3. *From the Reformation to the present time.* States are independent and equal, having mutual rights and obligations. It need scarcely be mentioned that, as in all historic development, each period shades off gradually into the one that follows.

1. *First period.* Oriental nations knew little of one another. Their dealings were chiefly in unregulated war. While the Greeks had commercial relations with other peoples, sent ambassadors, and made treaties and alliances, yet all foreigners were considered "barbarians," to whom no duties were owed. Even so advanced a thinker as Aristotle considered that they were intended by nature for slaves.[2] Among the Greeks themselves war was cruel, and breach of faith common. A maritime code, which was developed by Rhodes, and which formed the basis for later commercial codes, was probably their greatest contribution. In the earlier period of Roman development traces of international regulation were found in the *jus feciale*, enforced by a semireligious college that gave advice on questions of peace and war, and acted as heralds and ambassadors. As Rome became an empire and included the whole civilized world, international relations became impossible, although certain Roman legal concepts, such as the *jus gentium*, played an important part in the later rise of international law.

2. *Second period.* The extension of Rome's power over all the world had accustomed men to the idea of one absolute authority;

[1] Lawrence, The Principles of International Law, Part I, chap. iii.
[2] Politics, Bk. I, chaps. ii, vi.

and, even after the fall of Rome, this ideal remained in the Holy Roman Empire and in the papacy, each of which was, in theory, world-wide in scope and absolute in power. The permanence of the imperial title when its authority had become a mere shadow, and the actual influence that the pope was able to exert, show the strength of this concept in the medieval mind. Toward the end of the Middle Ages the idea of a common superior was attacked by several movements:

(a) The quarrel between emperor and pope divided Europe into rival camps and weakened the power of both claimants for supreme authority.

(b) The Reformation removed the claims of the pope over a large part of Europe.

(c) The rise of modern national states, nearly equal in power, and jealous of one another, struck a final blow at the idea of a single European head.

While international law did not really exist during this period, since the power that claimed supremacy was seldom able to enforce its commands, a number of secondary influences were preparing the way for it:

(a) The revival of commerce and the growth of practically independent cities led to maritime codes regulating their dealings. The most important was the *Consolato del Mare*, drawn up probably in the twelfth century and observed by all the Mediterranean powers. It contained rules concerning peace and war, rights of neutrals, prize law, and navigation. Other codes, such as the customs of Amsterdam, the constitutions of the Hanseatic League, etc., were recognized by cities in northwest Europe.

(b) The feudal system, while based on the idea of a common superior, brought in the concept of territorial sovereignty. The former ruler was lord of his *people;* now the ruler became lord of his *land*, and this limited his power to his own territory and laid the foundation for the modern theory of sovereignty.

(c) Christianity and chivalry taught more humane methods of warfare and emphasized the brotherhood of nations.

(d) The revived study of Roman law laid the basis for new ideas as to the relations of state to state:

(1) In the *jus gentium* of the Romans men thought they had found a "law of nature,"— fundamental principles to which the laws of all sovereigns should conform.

(2) Since national states arose as absolute monarchies, they were considered the property of their kings. Relations between states were regarded as dealings between individuals, and to these the Roman laws of property and contracts were applied.

3. *Third period.* With the way cleared by the destruction of the feudal system and the old idea of a common superior; with the rise of national states comparatively equal and organized on a territorial basis, and with relations in peace and war demanding new rules; with the revived study of Roman law furnishing the legal ideas which could be applied to these conditions, modern international principles were the inevitable outcome. These received their first definite formulation in the "De Jure Belli ac Pacis" of Hugo Grotius, a Hollander (1625). The enormous influence of this work was due partly to the wide knowledge and logical system of Grotius, based on the universally recognized theory of the law of nature, and partly to the horrors of the religious wars and to general desire for principles of international dealings. These religious wars had developed into great political contests, and the final supremacy of France over Austria, the remnant of the Holy Roman Empire, destroyed the last trace of the "common-superior" idea and made necessary a new theory. In the Peace of Westphalia (1648), which practically created modern Europe, the leading principles of Grotius were recognized, and his work was soon studied in the universities. His fundamental doctrines were:

(a) All states are equally sovereign and independent.

(b) The jurisdiction of the state is absolute over its entire area.

Here we have the modern idea of the state, with sovereignty viewed in both its external and internal aspects; and on this basis modern international law has developed. While the theory of a law of nature, upon which earlier writers based their ideas, has been discredited, the fundamental principles rest secure on the basis of common consent; and the history of international law since 1648 has been that of extension and increasing definiteness rather than of change in point of view.

66. Sources of international law. If we analyze the existing rules of international relations, their main sources will be found in :

1. *Roman law.* This formed a complete and general code from which most continental states derived their legal principles, and its authority was frequently invoked to cover the early relations of state to state. Besides, the Roman idea of a *jus gentium*, or system of law common to all nations, led to the idea that back of all laws made by states existed a code of moral obligations, or natural law, and that this should be binding on all states. Finally, the principle of Roman law that taught the equality of all citizens before the law led naturally to the new idea of states as equal and independent.

2. *The works of great writers.* From histories and biographies may be obtained much information regarding wars, diplomacy, and treaties, which have influenced the relations of states and the growth of international law. Even more important are the writings of great jurists. From the time of Grotius a long list of able writers has been formulating rules, which states have adopted in their external dealings, or has been reducing to a logical system the principles gradually worked out as the result of numerous concrete instances. The work of Grotius, Bynkershoek, and Vattel belongs mainly to the earlier formative period ; while that of Kent, Wheaton, Manning, and, in more recent times, Woolsey, Lawrence, and Hall, has been chiefly to arrange and classify, and to raise international law from chaos into a science.

3. *Treaties and conventions.* Since international law derives its binding force from the consent of states, and since treaties are compacts entered into by states, describing conditions which they promise to observe, such agreements form an important source of international law. Some, which are signed by a large number of states in practical agreement, create international law ; others, which are special arrangements among a few states, show what international law is, by specially providing for its exceptions. The most important treaties that form sources of international law deal with questions of :

(a) Territory. Examples are the treaties of Westphalia (1648), Utrecht (1713), Paris (1763).

(b) Sovereignty. Examples are the treaties of Versailles (1783), Paris (1856).

(c) Conduct. Examples are the Geneva Convention (1864) and the Brussels Conference (1890).

4. *International conferences and arbitration tribunals.* These are expected to administer existing international law or to decide questions involving international relations, and many principles which have been thus laid down are now an accepted part of international law. In general, while English and American jurists place emphasis on cases and precedents, German and French jurists follow codes; and in the majority of cases no new legal principles are created.

5. *The municipal law of states.* Many of the ordinary statutes of all states deal with international questions; and the attitude which these laws take indicates, and to a certain degree creates, international usage. Questions of citizenship and naturalization, neutrality, tariff, extradition, army and navy regulations, diplomatic and consular service, etc., are a few of the subjects that must be dealt with by the laws of each state, although the interests of other states are concerned. In addition, the decisions of the courts in dealing with such questions are often quoted as precedents in international negotiation. The decisions of admiralty courts in prize cases are based almost entirely on international law; and some of the most important decisions of the Supreme Court of the United States have dealt with questions fundamentally international.

6. *Diplomatic correspondence; state papers.* The correspondence between diplomats of various states or between the home government and its diplomatic agents often forms sources of information as to usage, and becomes precedent. Many states still regard such information as confidential, but the United States and England publish the greater part of their foreign correspondence. Instructions issued by states for the guidance of their officers or tribunals are also important. Thus the "French Marine Ordinance" of 1861 formed the basis for international prize law; and the "Instructions for the Guidance of the Armies of the United States in the Field" (1863) exerted considerable influence on the general adoption of more humane methods of warfare.

These sources, however, do not create international law until their provisions have become a part of the custom and usage of states, and are supported by international public opinion. Besides, as conditions and public opinion change, customs and usages formerly sanctioned are gradually replaced by newer usages, which then become a part of international law.

67. Parties to international law. Primarily international law governs the relations of states, that is, of sovereign political communities considered as equal in rights and obligations. To a limited extent, however, it also deals with nonsovereign organizations, and even with individuals.[1] Such bodies, which under certain conditions and to a partial extent come under the jurisdiction of international law, include:

1. *Nonsovereign political organizations.* A confederation, although composed of a number of sovereign states, may act as a unit in external affairs and thus become a party to international law as long as the confederation is maintained. The German and Swiss confederations which preceded present Germany and Switzerland occupied such a position. A protectorate, or political community which is under the suzerainty of some state, may have international dealings on all questions not forbidden by the suzerain. Egypt as a protectorate of England, and Cuba of the United States, are examples. A state neutralized by a great international treaty occupies a peculiar position. By agreement among the leading states of Europe, Belgium and Switzerland may not wage offensive war. To what extent that tends to destroy the sovereignty, and therefore the statehood, of Belgium and Switzerland is a difficult question in political science. Part of a state waging civil war against the remainder may also become temporarily a subject of international law.

2. *Corporations.* As owners of property, especially when, with property rights, are given governing powers, as was the case with England's famous East India Company, and, more recently, with the German East Africa Company and the British South Africa Company, — such organizations, though receiving all their

[1] Hall, International Law, Part I, chap. i.
Lawrence, The Principles of International Law, Part I, chap. iv.

powers from some sovereign state, may have dealings that bring them within the scope of international law.

3. *Individuals.* Although international law usually deals with individuals only through the states to which they belong, in certain cases, for example, as owners of property, as pirates or blockade runners, or as unauthorized combatants, individuals may come into direct relations with states other than their own, and in such cases they are properly included as subjects of international law.

It will be noticed that all of the above cases are exceptional or temporary. International law includes them only under peculiar circumstances, or covers only a small part of their external relations. Even when considering international law as dealing fundamentally with sovereign states, a further distinction must be made. It includes only those states that are commonly recognized by one another, — what is usually called the "family of nations." This excludes savage or barbarous communities, even though they be politically independent, and includes:

1. Those states that existed before international law was developed; such as France, Spain, England, and others.

2. New states admitted to the family of nations under the following conditions:

(a) States formerly considered uncivilized, admitted by common consent or treaty, as has been the case with Turkey, Persia, Japan, and others.

(b) States formed by civilized men in formerly uninhabited or uncivilized regions, as in the case of Liberia and of the South African Republic before it became a part of the British Empire.

(c) States whose independence was recognized after a successful revolt, as in the case of the United States and the various South American republics.

(d) States formed by a union of former sovereignties, as in the case of Germany and Italy.

With the above modifications, including certain nonsovereign bodies and excluding uncivilized sovereign bodies, international law may be said to deal with a number of states which recognize common rules, and which have equal standing before those rules. It must still be remembered that in actual practice the states that

possess powerful armies and navies, especially the British Empire and France, exercise a preponderant influence in European affairs; and that the United States, by means of the Monroe Doctrine, occupies a similar position in America.

68. Nature of international law. The foregoing discussion of interstate relations paves the way for a consideration of the real nature of international law. If the fundamental distinction that separates legal from moral rules be that the former are, and the latter are not, commands given and enforced by a determinate authority, then international law is not properly *law*. No power of enforcement exists, since it is created among sovereignties; no impartial authority exists to interpret its principles or to apply them in specific cases. Just as custom is a sort of imperfect law, in a primitive and imperfectly organized state, so international law is a sort of international public opinion or customary observance, imperfectly enforced in an imperfectly organized world state. From this standpoint, to make it effective, there should be a definite, recognized code of international law, with international courts to interpret and apply it. To make it properly *law*, there should then be compulsory obedience to that authority; but that would destroy the sovereignty of the state, and such law would be the municipal law of a world state.

On the other hand, international law is considerably more than a collection of moral rules. Its "doctrines have been elaborated by a course of legal reasoning; in international controversies precedents are used in a strictly legal manner; the opinions of writers are quoted and relied upon for the same purposes as those for which the opinions of writers are invoked under a system of municipal law; the conduct of states is attacked, defended, and judged within the range of international law by reference to legal considerations alone; and finally it is recognized that there is an international morality distinct from law, violation of which gives no formal ground of complaint, however odious the action of the ill doer may be." [1] Besides, serious objections have been raised to the statement that municipal law is always created and enforced by determinate authority. The legal fiction by which custom is

[1] Hall, International Law, p. 14.

transformed retrospectively into law when enforced by the courts sufficiently shows the rather indefinite boundary between law and custom.

If, then, examples of what are considered by all as law are similar in sanction to international rules, and if these rules are formed by legal methods and treated as legal in character, it must at least be admitted that, while they lie on the extreme frontier of law, it is more correct and more convenient to deal with them as a branch of law than as a branch of morals. For this reason they are properly included in a treatise on political science. They are sanctioned by laws passed by separate states, which incorporate the principles of international law into their municipal law and enforce them on their citizens; by the moral sentiment that exists among nations, and that causes loss of prestige to states violating it; and, in last resort, by war, in case international differences cannot be otherwise adjusted. At the same time it must be remembered that the subjects of international law are sovereign states, that the binding force of all international agreements rests upon continued consent and voluntary acceptance on the part of sovereign states, and that this sanction, though often strong and effective, is not strictly a legal sanction.

OUTLINE OF CHAPTER XII

REFERENCES

DIVISIONS OF INTERNATIONAL LAW

1. LAW OF PEACE
    - *a.* Independence
    - *b.* Equality
    - *c.* Property
    - *d.* Jurisdiction
    - *e.* Diplomacy
2. LAW OF WAR
3. LAW OF NEUTRALITY

INDEPENDENCE AND EQUALITY

PROPERTY

1. EXTENT OF A STATE'S TERRITORY
2. METHODS OF ACQUIRING TERRITORY
3. METHODS OF EXERCISING JURISDICTION OVER TERRITORY

JURISDICTION

1. OVER PERSONS
2. OVER PROPERTY

DIPLOMACY

1. DIPLOMATIC REPRESENTATIVES
2. TREATIES
3. ARBITRATION

WAR

1. USE OF FORCE WITHOUT WAR
    - *a.* Retorsion
    - *b.* Reprisal
2. CLASSIFICATION OF WARS
    - *a.* External
    - *b.* Internal
3. DECLARATION OF WAR
4. EFFECTS OF WAR

5. AGENTS, INSTRUMENTS, AND METHODS OF WARFARE
6. TREATMENT OF PROPERTY IN WAR
   a. On land
      (1) Public
      (2) Private
   b. At sea

NEUTRALITY

1. DUTIES OF BELLIGERENT STATES TO NEUTRAL STATES
2. DUTIES OF NEUTRAL STATES TO BELLIGERENT STATES

NEUTRAL COMMERCE

1. CONTRABAND
2. BLOCKADE

CHAPTER XII

CONTENT OF INTERNATIONAL LAW

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NOTE. Since this chapter aims to give only a brief outline of the essential topics with which international law deals, no detailed references to authorities are given. The arrangement follows, in general, that of Lawrence in his "Principles of International Law," but the statements are, in the main, limited to those concerning which all leading authorities agree.

69. Divisions of international law. In outlining the scope and divisions of the relations among states, a fundamental distinction is that between the normal rights and obligations that exist in time of peace and the exceptional rights and obligations that exist in time of war. A further subdivision of the latter gives the relation between the actual belligerents, on the one hand, and the relation between nonbelligerents and belligerents, on the other. The threefold division of international law thus becomes:

1. The law governing states in their normal peaceful relations
2. The law governing states in the relation of war
3. The law governing states in the relation of neutrality

The normal rights and obligations of states may be further subdivided in so far as they are concerned with independence, equality, property, jurisdiction, and diplomacy, giving as a general outline for the contents of international law: [1]

1. Normal rights and obligations of states
   - (a) Rights and obligations concerning independence
   - (b) Rights and obligations concerning equality
   - (c) Rights and obligations concerning property
   - (d) Rights and obligations concerning jurisdiction
   - (e) Rights and obligations concerning diplomacy

   } The law of peace

2. Abnormal rights and obligations of states
   - (a) Rights and obligations concerning war } The law of war
   - (b) Rights and obligations concerning neutrality } The law of neutrality

70. Independence and equality. The right of a state to independence is the logical outcome of its sovereignty, of which, in fact, independence is the external aspect. Accordingly each state has a right to manage its affairs without interference from other states, and is under corresponding obligations of noninterference in their affairs. Evidently perfect independence among states is as impossible as perfect liberty among individuals. Mutual relations demand mutual concessions, and treaty stipulations frequently put voluntary limits to state action. In fact, after unsuccessful war or because of unequal strength, even involuntary restrictions are sometimes enforced. An exact line between sovereign independence and various degrees of protection, restriction, and dependence is, in practice, difficult to draw. In general, however, states are considered independent, and interference of any kind is exceptional, and justifiable only under certain conditions. Any interference violating independence is called *intervention*. It involves force or the threat of force, and presupposes lack of consent of at least one party to the interference. In these respects it differs from advice, mediation, and arbitration, in each of which the idea

[1] Lawrence, The Principles of International Law, p. 110.

of coercion is absent. International law recognizes the following as legal rights of intervention:

1. *Necessity of self-preservation.* For states, as for persons, this right overrides ordinary laws. The danger must, however, be direct, immediate, and sufficiently important to justify force.

2. *Enforcement of treaty rights.* When the state of things guaranteed in a treaty is threatened, intervention, if provided for in the treaty, is just and legal when carried out to the extent and in the manner prescribed.

3. *Prevent or terminate illegal intervention of another state.* A state may interfere to save a friend on the same grounds as those on which it maintains its own existence. This right is liable to abuse and easily shades off into actions hard to justify. An intervening state should be sure that sufficient cause exists, and that its motives are unselfish. The maintenance of the balance of power in Europe and intervention in internal wars on the grounds of humanity are often excuses put forth to uphold interference, and history is full of unjustifiable acts committed in their name. In such cases intervention is a matter of policy rather than of right. Each case must be judged on its merits and be decided by international public opinion.

A peculiar kind of intervention recently became prominent when European states compelled South American states to pay debts owed to citizens of the European states. The Drago Doctrine, so called from the Argentine statesman who urged it, properly declared that, since states are sovereign, such intervention was illegal. Still justice demanded some action when a government refused to pay its debts. In the second Hague conference (1907) it was agreed that such disputes should be submitted to the Hague Tribunal, but that if the debtor country refuses to arbitrate or refuses to abide by the award, intervention is justifiable.

In modern political theory all sovereign states are considered as having an equal status before international law. While, for purposes of ceremonial and etiquette, certain distinctions remain, squabbles over precedence, formerly common, are now rare; and in such devices as alphabetical order in international conferences, and the *alternat* in treaties,[1] even the semblance of inequality

[1] See section 73.

is avoided. In actual practice, however, the doctrine of equality seems to be breaking down. In Europe the British Empire, France, and Italy, left in a dominant position by the recent war, practically control the affairs of the Old World, their actions being considered binding on the other states regardless of objections. States have been created, dismembered, and coerced; conditions of peace dictated; and, in general, a sort of political supervision established. In America the United States holds unquestioned primacy, and, by means of the Monroe Doctrine, exercises an increasing influence in the affairs of this continent that is scarcely consistent with the theory of state equality. Neither the concert of powers nor the Monroe Doctrine rests on definite principles of international law, but as important features of modern international politics they demand consideration.

71. Property. All modern states are large property owners. Public buildings, munitions of war, ships, and similar possessions are ordinarily dealt with by municipal law; and only in case of war, when they become liable to capture, are they subject to international regulation. The property with which international law usually deals is *territory;* that is, the land and water areas over which each state exercises jurisdiction. At present territory is essential to state existence, law has a territorial basis, and sovereignty and territory are conterminous. Accordingly several questions become important. What constitutes the territory of a state? How may territory be acquired? In what ways may a state exercise control over territory?

1. The territory of a state includes:

(a) All land and water within its external boundaries. When rivers or lakes separate states, the boundary line, unless otherwise fixed by treaty, follows mid-channel.

(b) The sea within a three-mile limit from its coasts at low tide. "This peculiar jurisdiction is acknowledged to guarantee immunity from acts of belligerency between ships of nations other than that to which the coast sea belongs; to enable a state to carry into effect its maritime laws and customs regulations; to secure protection to the inhabitants of the coast, especially to those engaged in coast fisheries; and to provide for an adequate system of coast

defense." [1] This limit, based on the range of artillery fire, was fixed about a century ago. While it seems proper that its width should increase with the greater range of modern artillery, and efforts along this line have been made, no international agreement for a wider zone has been reached.

(c) Bays and estuaries that indent its coast. No exact limit has been placed on the width of opening between headlands over which a state may claim jurisdiction. Considerable authority exists for a ten-mile limit, but in some cases, as in the Dutch control over the Zuyder Zee, or that of the United States over the Chesapeake, even wider waters are included.

(d) Islands fringing its coast. While it is sometimes difficult to draw a definite line as to where *littoral* islands end, the general rule is that such islands are essential to the defense of a state and form part of its territory.

2. The principal methods of acquiring territory are as follows:

(a) Occupation. Land previously unoccupied or held by uncivilized peoples, not recognized as belonging to the family of nations, may be thus acquired. Such action should include a declaration of intention to occupy the territory, and actual settlement.

(b) Cession. Territory may be formally transferred, usually by treaty, from one state to another. Such transfer may take the form of sale, gift, or exchange.

(c) Conquest. Such acquisition, resulting from force, differs from cession in that the consent of the former owner is unwillingly given. Title based on conquest is nevertheless valid in international law.

(d) Accretion. By the action of water alluvial islands may be formed or water boundaries changed.

3. A state may exercise authority over territory in several ways:

(a) As a part of its dominions. Over such territory a state has absolute power in external and internal affairs, although it may delegate to subordinate organs large functions of local or colonial self-government.

(b) As a protectorate. The exact status of a protectorate is not yet uniform or clearly defined. In general the relation is established by treaty between a stronger and a weaker state; and in

[1] Davis, Elements of International Law, p. 55.

most protectorates foreign relations are controlled by the protecting state, but internal affairs ordinarily are not interfered with. In their relations to other states both constitute a single system, the protecting state defending the protectorate against interference, and, in turn, being responsible for its actions. The relations existing between France and Tunis and between the United States and Cuba are examples.

(c) As a sphere of influence. This is an even more recent and indefinite method of exercising authority. It is applied to territory occupied by uncivilized peoples, and rests upon treaties drawn up among the great powers, — the people occupying the territory concerned not being party to these agreements. Over a sphere of influence a state does not necessarily exercise any direct control, either internal or external, but it claims that other states shall not establish protectorates or acquire dominion there, while it is free to do so if it chooses.[1] The first steps in acquiring spheres of influence are often taken by private incorporated companies to whom governing authority as well as trading rights are granted. As a result responsibilities are soon thrown on the governments chartering such companies, and spheres of influence tend to become protectorates or colonies. The partition of Africa has proceeded largely by this method.

Special rights over waters may be mentioned. Formerly certain states claimed jurisdiction over parts of the high seas. These claims are now abandoned, the last attempt to enforce such right, that of the United States in the Bering Sea controversy, being unsuccessful. Similarly, states formerly controlled narrow passages lying within their territory, even when joining portions of the high seas. Until 1857 Denmark levied sound dues on ships passing between the North Sea and the Baltic. At present, except for the Bosporus and Dardanelles, where special treaties exclude warships, all such waters are open to all ships for "innocent passage." The Suez and Panama canals, neutralized by international agreement, are likewise open to all ships in war and in peace, hostile acts alone being forbidden. It is also the custom to permit free navigation of great rivers, even if they lie partly or wholly within the territory of a state.

[1] Lawrence, The Principles of International Law, p. 164.

72. Jurisdiction. Jurisdiction is the right to make and enforce law. In general it rests on a territorial basis, and, with certain exceptions, noted later, a state's jurisdiction extends over all persons and things within its territory. The persons over whom a state exercises jurisdiction include:

1. *Natural-born citizens.* Each state decides for itself what circumstances of birth give citizenship, whether determined by place of birth or nationality of parents. Lack of uniformity results frequently in conflicting claims as to citizenship.

2. *Naturalized subjects.* Each state also fixes the terms upon which it will admit aliens to citizenship. Important international questions arise when a naturalized citizen returns to his original homeland, diverse opinions still existing, although recent treaties have removed many grounds of contention.

3. *Resident aliens and alien travelers.* These are subject to the laws of the land, but their political status is not thereby affected. Usually resident aliens are exempt from military service.

In the case of property, jurisdiction over real property belongs to the state in which it is located; jurisdiction over personal property belongs, in general, to the state in which the owner has his home. An important exception prevails in the case of merchant vessels. When in the territorial waters of a state, they come under its jurisdiction, although states frequently refuse to exercise this right in cases of purely internal concern to the vessel. Over its own vessels, public and private, a state has jurisdiction on the high seas. Its authority also extends to pirates taken by its vessels. The essence of piracy may be stated as an act of violence committed outside the jurisdiction of any state and unauthorized by any state. Pirates lose the right of protection by their original states and become international outlaws.

Limited jurisdiction is possessed by a state over its subjects abroad. This is, of course, a mixture of personal with territorial jurisdiction. Offenses against the home state, or sometimes the graver crimes, if not punished by the state in which they were committed, are punished by the home state if the criminal returns to its territory and thus comes under its jurisdiction. "The surrender by one state to another of an individual who is found within

the territory of the former, and is accused of committing a crime in the latter,"[1] is called extradition. Most states have drawn up extradition treaties covering the majority of cases, offenses "of a political nature" usually being excluded. If the case is not covered by treaty agreement, a state may give up the accused, but is under no obligation to do so. A peculiar case arises when the accused is a citizen of the state to which he has fled, and not of the state in which the offense was committed. England and the United States often give up their own subjects, keeping watch on the justice of the trial; but many states refuse, either themselves punishing their citizens or allowing them to go unpunished.

Several exceptions to the general rule that jurisdiction coincides with territory should be noted:

1. Foreign rulers and their suites when traveling in other states are free from their jurisdiction.

2. Public armed forces of states are exempt from foreign jurisdiction when abroad. Special permission is usually secured to pass troops through foreign territory, but is not necessary when a warship enters a foreign harbor.

3. Diplomatic agents and their households are free from the jurisdiction of the state to which they are sent.

4. By special treaty arrangements citizens of western states resident in certain Eastern countries, including Turkey, China, Siam, and others, may have their cases tried in special consular courts that apply the laws of their home state. In Egypt international courts have worked well.

73. Diplomacy. In foreign intercourse a state may communicate through its ministry of foreign affairs, through special commissioners appointed for the purpose, or through its regular diplomatic officials resident in the foreign state. The practice of sending and receiving diplomatic representatives is very ancient, dating back at least to the Egyptians and Greeks. Until the close of the Middle Ages, however, ambassadors were sent on special occasions only, and their missions were temporary. Increased intercourse, due to commerce and wars, led to the establishment, about the sixteenth century, of a permanent service; but the rights and duties

[1] Lawrence, Principles of International Law, p. 233.

of diplomats were not clearly defined until the assembling of great international conferences after general European wars. Two centuries ago Latin was the language used in diplomacy; later it was replaced by French; recently the leading states have begun to use their own languages.

The rules of the Congress of Vienna, as modified by the Congress of Aix-la-Chapelle (1818), divided diplomatic representatives into four classes. In the first are ambassadors and papal legates or nuncios, these latter being sent to Catholic states only. The second class includes envoys or ministers plenipotentiary; the third, ministers resident; and the fourth, *chargés d'affaires*. Within each class seniority of residence gives precedence. In general, states send representatives of the same rank as they receive. A state may refuse to receive, may ask the recall of, or may dismiss a particular diplomat who is *persona non grata*, without insult to his state, but the complete termination of diplomatic relations almost always precedes war. The duties of a diplomatic official include keeping his home government informed as to political events and public opinion in the state to which he is sent, conducting negotiations and treaties, protecting the rights of fellow citizens residing or traveling abroad, and representing his state in numerous social and ceremonial ways. The fiction of *exterritoriality*, by which foreign representatives are exempt from any jurisdiction except that of their own state, has already been mentioned.

Consuls originated after the crusades, when the Italian cities became important commercial centers. Established by these cities in the Levant, where different law and religion prevailed, their duties were at first chiefly judicial. As commerce developed in western Europe the reciprocal exchange of consuls was begun, first by trading companies, later by governments. Gradually their judicial powers were restricted and their commercial functions enlarged. At present they are agents sent to various foreign places, especially seaports, to represent the trade interests of their states. Each state determines the rank, tenure, manner of appointment, and duties of its own consuls. In semicivilized states they have the same exemption from jurisdiction as diplomats. Their duties include a general supervision of the business interests of

their states, certain judicial authority over maritime disputes and offenses committed on shipboard, and various legal and notarial functions in the interests of their fellow citizens abroad. The special consular courts established in certain Eastern states have been mentioned.

Formal agreements entered into by states are called treaties. While no coercive authority enforces their provisions, inviolability of treaties is the basis of international dealings, and nonobservance is sufficient cause for war. Each state, in its fundamental law, determines the location of its treaty-making power. Usually some branch of the executive exercises this function, although, in the United States, ratification by the Senate is required. Accordingly, for validity of treaties it is essential that the contracting parties possess the treaty-making power, that the legal organ of government makes the treaty, that formal consent of both parties is given, and that the treaty is possible of fulfillment.

Treaties may be divided into transitory agreements or conventions, which are complete when some stipulated act is performed, such as a boundary settlement or a cession of territory; and permanent treaties, which have continuing effect and regulate future relations. Terms frequently used in connection with treaty-making include:

1. *Protocol.* A rough draft of preliminary decisions to serve as a basis for a later treaty.

2. *Ultimatum.* A final decision of one party, which must be accepted or rejected without change.

3. *Manifesto.* A statement issued by one party giving reasons for a particular policy.

4. *"Most-favored-nation" clause.* An agreement to extend to each other privileges which either party may later grant to any other state.

Treaties are sometimes negotiated by special commissions appointed for the purpose, usually by the minister of foreign affairs with the regular diplomatic agents. It is customary to sign treaties of peace on neutral ground, and ordinary treaties in the state whose interests are chiefly concerned. To maintain the principle of state equality the *alternat* is now common; that is, as many copies of

the treaty are prepared as there are states concerned, but the name of each state appears first and is signed first in its own version. Former customs of elaborate lists of titles and honors, appeals to God, and accompanying gifts, pledges, or hostages are now practically abandoned; but the great states sometimes guarantee treaties made by weaker states.

When an international dispute arises the aggrieved state usually makes known its cause for complaint and demands redress from the offending state. If the disagreement is serious, war may result. Lesser disputes may be satisfactorily settled by an exchange of diplomatic notes, by diplomatic negotiations, by mediation of a third power either at the request of the disputing states or at its own suggestion, or by arbitration. In arbitration the dispute is submitted to a tribunal whose composition, powers, and method of procedure are made the subject of a preliminary treaty. Its decision is considered binding unless bad faith on the part of the arbiters or violation of some part of the preliminary agreement can be shown. Arbitration is particularly valuable in cases involving legal questions demanding careful investigation and consideration.

Interest in arbitration as a means of international adjustment has been increased by the recent Hague conferences. In 1899, on the invitation of the Russian czar, delegates representing twenty-six states met at The Hague to discuss methods of maintaining peace, diminishing the hardships of war by land and sea, and easing the burden of military and naval armaments. Since unanimous consent was necessary for final decision, agreement was difficult, but several important "conventions," signed by all, or by a majority of states, were drawn up. Because of opposition, led by Germany, no agreement was reached concerning disarmament; but a convention concerning arbitration was signed by sixteen states and has been observed since by others. This convention urged mediation and arbitration, created an International Commission of Inquiry, and established a permanent Court of Arbitration, outlining its powers and procedure. Several disputes, formerly sufficient to cause war, have been adjusted by its action. In 1907 representatives of forty-four states met in a second Hague conference. Obligatory arbitration and immunity of private property at sea in time of war were discussed;

and, while unanimous agreement was not reached, a majority voted in favor of both proposals. Certain rules for the amelioration of war were laid down, the question of contractual debts was settled,[1] and an International Prize Court was established. Similar conferences will probably be held in the future.

74. War. Since no authority enforces international relations, differences that cannot be otherwise adjusted must be settled by force. Methods of applying force, short of actual war, include:

1. *Retorsion.* This is practically international retaliation, placing restrictions upon, or refusing privileges to, a state in return for unfriendly action on its part.

2. *Reprisal.* This is seizure or retention of property belonging to the offending state or its citizens. Special forms of reprisal are embargo, in which vessels of all states or of certain states are detained in port; and pacific blockade, in which commercial intercourse with a state is interfered with to secure redress for international wrong. This is, in fact, a sort of international police duty, affecting only the states concerned, between whom there is usually considerable disparity in strength.

If all other means fail, the final resource is war, which may be defined as a contest carried on by public force between states or parts of states. Wars may be divided into external wars between sovereign states and internal civil wars or insurrections. In internal wars the laws of war are applied to the revolting portion of a state as soon as military force is needed to quell the insurrection. If recognized as a "belligerent" by other states, the revolting population is put on an international footing. Such recognition should be given, however, only when the disturbance has reached the proportions of a considerable war, and when the interests of the recognizing states are involved. Previous to this, recognition would be an unfriendly act. When a new state is formed by a successful revolt, recognition of its independence by other states is necessary for its admission to the family of nations. Such action should not be taken before peace is made.

The right to declare war or to begin hostilities is determined by the constitution of each state. Usually the executive is given

[1] See section 70.

authority to wage defensive war, but the consent of the legislature is needed for offensive war. Power to declare war, formerly vested in colonial governments and commercial companies, is no longer granted. If war is waged by unauthorized persons, their state may take responsibility, in which case war began with the first hostile act; or it may disavow the act, punish the offenders, and make reparation. The custom of issuing formal declarations of war is falling into disuse, but a state intending to wage war should at least notify its own citizens and neutral states.

The direct effect of war is to place belligerent states and their citizens in a condition of nonintercourse with each other, and to make each citizen of one state the legal enemy of every citizen of the other. Commercial intercourse ceases; contracts and other legal obligations are suspended. The effect of war on treaties depends upon the nature of their contents. Great international agreements or treaties intended to be permanent, executed with full knowledge that war may occur, are not affected. Ordinary treaties between belligerents are suspended during hostilities. Treaties made in anticipation of war come into effect when war begins.

The laws of war are constantly modified as conditions of warfare change. The general tendency is toward greater humanity and liberality. War is now considered an exceptional condition, to be terminated as soon as possible. It is to be waged only by legally authorized persons, not by private individuals or against passive inhabitants of the enemy's territory. The smallest amount of damage consistent with the necessities of war is to be inflicted. In the treatment of persons, combatants and noncombatants, great improvement has been made; but property, though somewhat safeguarded, is still under burdensome disabilities. At present there is a growing desire for peace, arbitration, and disarmament; at the same time, armies and navies are increasing in size and efficiency, and implements of destruction are multiplied.

Considerable difference of opinion exists as to the proper agents, instruments, and methods of warfare. In addition to the regular army and navy, including organized militia and reserves, the Brussels Conference (1874) gave rights of combatants to guerrilla troops, if they are organized under a leader responsible for his

subordinates, wear a distinctive badge or uniform, carry arms openly, and conform to the usages of war. A levy *en masse*, or uprising of the male population, is legitimate if they are drafted by the government or if they take up arms in an organized way to resist invasion. States maintaining large standing armies often refuse to accept this principle. An uprising in territory held by the enemy is, however, unauthorized. International law recognizes the use of uncivilized troops if organized and disciplined, but does not sanction the employment of uncontrollable bands of savages. Spies may be used, but, if captured, they are liable to the penalty imposed by military law. Privateering has practically ceased since it was forbidden by the Declaration of Paris (1856); but it is customary for states to use merchant ships as auxiliary cruisers and to build up steamship lines by subsidies, demanding conformity to certain specifications as to size, speed, and use in war.

As to methods of warfare, assassination is forbidden, the use of poison or of weapons that inflict useless suffering is condemned, and devastation of the enemy's territory is prohibited unless "imperatively required by the necessities of war." Unfortified places, if unresisting, may be occupied but not attacked, and prisoners must be given humane treatment. In the Geneva Convention (1864) the hospital service was neutralized by international agreement. It must be remembered, however, that the rules of war are not binding on one belligerent if broken by the other; that in time of war the greatest temptation to disregard international agreement exists; and that such rules do not attempt to regulate war among uncivilized peoples, or between civilized peoples and savages, where the likelihood of violation is greatest.

The treatment of property in war demands particular attention. Property may be classified as public or private, depending on ownership, and its capture is regulated on land and at sea. The leading rules of international law concerning it may be summarized as follows:

1. *On land.* (a) Public property of a military character or capable of military use may be captured or destroyed. Property used for religious, charitable, educational, or other essentially civil purposes should be protected.

(b) Private property is classified as real or personal. The former is exempt from seizure except when necessary in waging war; but personal property, if useful in war, may be captured or taken by requisition. Requisition must be made in accordance with the law of the invading state, and compensation for property so taken is growing increasingly frequent. Pillage is forbidden.

2. *At sea.* Public and private vessels of the enemy, with their contents, may be captured anywhere except in neutral waters. The capture of enemy property in neutral ships will be discussed later.[1] Vessels captured at sea are called *prizes*. They may be sent in charge of a prize crew to some home port of the captor, or, if men cannot be spared, may be destroyed or allowed to resume their voyages under a *ransom contract*.

Since property captured at sea legally belongs to the captor's government, it may be used, destroyed, or sold, and all or part of the proceeds distributed among the captors, according to the municipal law of the state. To decide disputes concerning such captures all states establish prize courts. These apply the principles of international law, with such modifications as the municipal law of their own state may make, and follow the precedents of prize courts in other states. Their procedure is rather more of an inquest than a trial, since the burden of proof rests on the person who claims that the capture was unlawful. A prize court never sits in neutral territory, and, since no enemy has a legal status before it, the interests of the captured vessel must be represented by a neutral or by a citizen of the captor's state. The second Hague conference established an International Prize Court to hear appeals from national prize courts; and an International Naval Conference, composed of delegates from the ten principal maritime states, which met at London in 1909, laid down certain rules for its guidance concerning blockade, contraband of war, destruction of captured vessels, and other maritime questions.

The law dealing with enemy persons and property offers many examples of doubtful jurisdiction, and agreement on all points is hard to secure. Persons possess enemy character in different degree, depending upon citizenship, domicile, temporary residence,

[1] See section 76.

etc. Property partakes of enemy character, depending upon nationality or residence of its owner, the place from which it comes, and the control exercised over it by belligerent states. Treaty agreements covering special cases have removed many possibilities of dispute, and international conferences bid fair to secure further uniformity.

Belligerents may carry on nonhostile intercourse by means of flags of truce, passports or safe-conducts, licenses to trade, and armistices or temporary suspension of hostilities. An agreement regulating nonhostile intercourse is called a *cartel*, and an agreement for the surrender of a fortified place or a military or naval force is called a *capitulation*.

Wars are almost always brought to a close by a treaty of peace. This usually settles in detail the points in dispute, but certain consequences follow, as defined in international law. Belligerent rights cease, and private rights, suspended during the war, are revived. In the absence of special treaty stipulations the rule of *uti possidetis* legalizes the state of things existing at the time that peace is declared.

75. Neutrality. Neutrality may be defined as "the condition of those states which in time of war take no part in the contest, but continue pacific intercourse with the belligerents." [1] However, neutrality must be distinguished from neutralization. A neutral state or person may cease to be neutral if either desires; but a neutralized state, person, or thing, such as Belgium and Switzerland, or the hospital service, or the Suez Canal, is set apart by the common consent of states, and its condition is involuntary.

The idea of neutrality is comparatively recent. In former times war was the normal condition, and noncombatants, usually weaker powers, had few rights that were respected, and were allowed to do nothing that would interfere with the operations of belligerents. Gradually, partly through self-interest as commerce increased, and partly through changing ideas, the principles that noninterference and impartiality were the duty of neutrals, and that respect for neutral sovereignty was the duty of belligerents, gradually took form. Until the close of the eighteenth century little more than

[1] Lawrence, Principles of International Law, p. 473.

lip service was given to these principles; and even later, states made little attempt to prevent their citizens from violating them. The insular situation of England and her policy of keeping out of European wars, and the position taken by the United States from the beginning of its existence, laid the basis for modern neutrality.

In the law of neutrality a distinction may be made between the relation of state to state and of state to individual. The former opens up the question of the duties of belligerents to neutrals and of neutrals to belligerents; the latter includes such topics as neutral commerce, blockade, and contraband.

The duties of a belligerent state to neutral states may be outlined as follows:[1]

1. Refrain from carrying on hostilities within neutral territory.

2. Refrain from making direct preparations for acts of hostility while on neutral territory. What is needed to maintain life or to carry on navigation may be obtained, but warlike expeditions must not be fitted out or bases of supplies established.

3. Obey reasonable regulations made by neutral states for protecting their territory. Neutrals may restrict the use of their ports, enforce the "twenty-four-hour" rule, or make other regulations, but must treat both belligerents alike.

4. Make reparation if neutrality is violated. In this case the offending belligerent deals entirely with the offended neutral, who, in turn, deals with the other belligerent if it also suffered from the violation of neutrality.

The duties of neutral states to belligerent states are:

1. Not to give armed assistance to either belligerent.

2. Not to allow one combatant privileges denied the other.

3. Not to supply belligerents with money or instruments of warfare. Individual citizens or corporations in a neutral state, however, may finance loans or furnish munitions of war.

4. Not to allow belligerents to send troops through their territory or to levy troops therein.

5. Not to permit belligerents' agents or its own citizens to fit out or assist, in its territory, belligerent expeditions.

[1] Lawrence, Principles of International Law, Part IV, chaps. ii, iii.

6. Not to allow its subjects to enter military or naval service of belligerents. Occasional individuals cannot be prevented, but a large-scale movement should be restrained.

7. To make reparation to belligerents injured by breach of neutrality. Such cases are difficult to decide; but, in general, the injury must be specific and serious, and lack of due diligence on the part of the neutral proved.

76. Neutral commerce. The most important activity of individuals with which the law of neutrality deals is neutral commerce. Its consideration involves the following questions: the ownership of the goods, the nationality of the vessel carrying them, the nature of the goods, and their destination. These determine what goods are liable to capture, and open up the important topics of blockade and contraband.

In the Middle Ages war at sea was little better than piracy, and commerce was never safe. In the first great maritime code, the *Consolato del Mare*, the fate of goods depended on the nationality of their owner, those belonging to citizens of belligerent states being liable to capture, wherever they were found. This formed the customary practice of states until the middle of the last century; although as early as the seventeenth century Holland, usually a neutral with a large carrying trade, urged the more liberal rule that *free ships make free goods*. This doctrine, basing liability to capture on the nationality of the vessel, was incorporated into numerous treaties, but the naval preponderance of England, who opposed it, for a long time prevented its general acceptance. Finally, in the Declaration of Paris (1856) the great powers adopted the following rules concerning commerce in time of war:

1. The neutral flag covers enemy's goods with the exception of contraband of war.

2. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag. Hence at present, except for contraband of war, all goods in neutral ships, and even neutral goods in belligerent ships, are exempt from capture. At the second Hague conference an attempt was made to secure exemption of all private property from capture at sea, but opposition, led by England, prevented the acceptance of that proposal.

There is much disagreement as to what constitutes contraband of war. All states are agreed that certain articles, useful only in warfare, are contraband, and that other articles of no use in war are not contraband; but between these extremes are many things useful in both peace and war, concerning which no definite rules can be made. Each case must be decided on its merits, depending upon the nature of the goods and their destination. Besides, changing conditions make many things contraband that were formerly useless to belligerents, coal and armor plate at the present time being examples. Usually states possessing a large commerce and navy advocate an extensive contraband list, while states of little maritime importance contend for greater freedom in neutral trade. A fairly definite classification of goods into absolute contraband, conditional contraband, and free was accepted by the ten maritime states represented at the London International Naval Conference (1909).

The essentials of guilt in contraband trade require that contraband goods must pass outside neutral territory, and have, directly or indirectly, a belligerent destination. The penalty is confiscation of contraband goods, and of the vessel if it can be shown that the owner was aware of the contraband nature of its cargo. While the furnishing of contraband goods to a belligerent by a neutral state is sufficient cause for war, neutral individuals may furnish such materials at their own risk. Neutral states are not required to interfere in such trade, but belligerents are expected to police their frontiers and the high sea sufficiently to prevent contraband goods reaching their destination.

In time of war free access to all ports is permitted to all merchant vessels except in case of blockade. This may be *strategic*, aiming to capture the blockaded port; or *commercial*, aiming to weaken the enemy's resources by preventing the ingress or egress of commerce. Blockade is the outcome of a long struggle between the claim of belligerents to wage war unhindered and of neutrals to carry on unrestricted trade. In this contest each side has made extreme claims. Belligerents have declared absurd "paper blockades" that they could not enforce, and neutrals have tried to restrict blockade in such ways as to make it ineffective. At present

the international rules concerning it are fairly well worked out. A blockade is binding only when it is *effective;* that is, when vessels are in real danger if they attempt to pass through. Notice of blockade must be given, some attempt must be made to evade or violate the blockade before a neutral ship may be captured, and the penalty is confiscation of ship and cargo. According to the doctrine of *continuous voyage*, if it can be proved that a vessel or its cargo, nominally bound for a neutral port, is ultimately destined for a blockaded port, the whole voyage is a continuous one, and the vessel or cargo, or both, depending upon their respective destinations, are liable to capture. The offense of breaking blockade clings to a vessel until it reaches a neutral port, unless, meantime, the blockade be raised. The offense exists only so long as the blockade exists.

To make effective the rights of belligerents in capturing enemy property at sea, seizing contraband of war, and maintaining effective blockade, it is necessary that they should also have the right of search, for the purpose of ascertaining the nationality of vessels, the nature of their cargoes, and their destinations. Public armed vessels of a state are not liable to search in war or in peace, and it is still a controverted point whether neutral merchant vessels may be visited when sailing under convoy of ships of war of their own nation. The practice of convoy, formerly the cause of much dispute, is falling into disuse, largely because of practical difficulties met in uniting into a single fleet vessels of different rates of speed. Belligerent merchant ships are justified in resistance, flight, or deception; but neutral merchant ships may be stopped and searched by war vessels of belligerents anywhere except in neutral waters, provided the international rules of search are observed. These include inspection of the ship's papers to discover its nationality and destination and the nature and destination of its cargo. If the papers are unsatisfactory, actual inspection of the cargo is permissible; if they are regular, showing neutral origin and destination of ship and cargo, the vessel is allowed to proceed. If contraband goods with hostile destination are found, if the vessel has just left or is bound for a blockaded port, or if deceit is practiced or resistance offered, the ship is sent into port as a prize.

Since neutral vessels and property are presumably exempt from capture, they may not be confiscated until judgment has been pronounced by admiralty courts after due legal investigation. Hence the captor is under obligation to conduct the visit and search with proper regard for the safety of persons and property, to use all reasonable speed in bringing in the captured property for adjudication, and to exercise due care in preserving the captured vessel and goods from loss or damage. If negligence on these points can be proved, compensation is due to the injured parties. Neutral vessels must never be destroyed; if captured vessels cannot be brought in for adjudication, they must be released.

OUTLINE OF CHAPTER XIII

REFERENCES

FORMS OF THE STATE

1. AS TO TERRITORY AND POPULATION
    - *a.* City state
    - *b.* World empire
    - *c.* National state
2. AS TO LOCATION OF SOVEREIGNTY
    - *a.* Monarchy
    - *b.* Aristocracy
    - *c.* Democracy

FORMS OF GOVERNMENT

1. DESPOTIC AND DEMOCRATIC
2. HEREDITARY AND ELECTIVE
3. UNITARY AND DUAL
4. PARLIAMENTARY AND NONPARLIAMENTARY

UNITARY AND DUAL GOVERNMENTS

1. UNITARY
2. DUAL
    - *a.* Confederate
    - *b.* Federal

PARLIAMENTARY AND NONPARLIAMENTARY GOVERNMENTS

APPLICATION TO MODERN STATES

CHAPTER XIII

FORM OF THE STATE AND OF GOVERNMENT

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77. Forms of the state. In the strict sense of the word a classification of states is impossible.[1] All states must combine the essential elements, — territory, population, unity, and organization. All states are alike sovereign and therefore perfect and equal. However, an examination of these essentials indicates certain valuable distinctions.

From the standpoints of territory and population states may be classified according to their total area or total numbers, but such classification has little value in political science. Nevertheless, one distinction is often made on this basis. The terms "city state," "national state," and "world empire," while, in the main, mere historical descriptions, contain fundamental ideas as to the relation of geographic and ethnic unity to state existence, and are perhaps the most logical divisions of states from the standpoint of their physical elements. States that include a number of more or less distinct geographic units and widely diverse nationalities must differ in many respects from those with compact territorial and ethnic foundations. Mere size in area and in population necessarily

[1] Willoughby, The Nature of the State, p. 351.

affects the form of political life, and, in spite of the theory that states are legally equal, makes them far from equal in fact.

The requisite of unity offers no basis for classification, since all states must alike possess it. This leaves, then, the organization of the state as the final means of distinction. In their governments states show greatest diversity and offer the most natural basis for classification. It may be asserted that, since states manifest their existence only through their governments, and since on no other basis can they be properly distinguished, a classification of governments is in essence a classification of states. To this no serious objection can be urged except that, in maintaining the distinction between state and government, it is more exact to indicate that the form of government is the actual basis of division.

On the other hand, there is a large school of writers who do not consider the state completely organized in its government. They narrow government to the ordinary legislative, executive, and judicial machinery, excluding such irregular or infrequent organs as conventions, plebiscites, and elections. Accordingly they do not locate sovereignty in the government as a whole, but speak of a political sovereignty of the people, behind the government, or of a legal sovereign, consisting of some part of the government.[1] From this standpoint a triple distinction between state, sovereignty, and government exists, and a classification of states based on the location of sovereignty within the state is made.[2] Aristotle's division, then, still holds good, states being considered as monarchies, aristocracies, or democracies, in proportion as sovereign power is respectively in the hands of one, of the few, or of the many.

A monarchy is almost inconceivable except in case of a savage, tribal state, in which the chief, considered as a representative of the gods, is the sole source of political authority. An aristocracy exists when a minority, because of superior organization, intelligence, or force, is able to maintain supremacy. The feudal states of the Middle Ages, Turkey, and Russia before the war, were examples. A democracy indicates that civic consciousness has

[1] See sections 49, 50.

[2] Burgess, Political Science and Constitutional Law, Vol. I, Bk. II, chap. iii.

spread through the mass of the population and developed to a certain degree of intensity. Under such conditions the majority cannot long be prevented from exercising sovereignty. The term "majority" is, however, only an approximate one, since even in the widest democracies political sovereignty is in the hands of a fractional part of the entire population. By excluding women, minors, and certain classes of adult males, about one fifth of the population are active citizens, and within this group a more or less definite majority controls. Even in last resort, in case of force, a minority of the entire population could subdue the remainder. With these modifications modern leading states may be considered democracies. While the sovereign and the government are practically identical in an aristocracy, the government is wider than the sovereign in a monarchy (i.e. the absolute ruler governs with the assistance of officials who receive their authority from him); and the government of a democracy is always aristocratic, though it receives its authority from the mass of the people.

If, as before indicated, the state is viewed as completely organized in its government, with sovereignty located in the government as a whole, the preceding classification of states is not valid. What has just been called the sovereign becomes then a part of the government, sharing in sovereign power only when actually exercising it; and a classification of governments into monarchies, aristocracies, and democracies is so evidently indefinite as to be useless. Practically all modern governments contain both aristocratic and democratic elements, and many retain their hereditary monarch.

This discussion may be summed up as follows: Classification of states on the basis of territory and population is mere description; classification on the basis of unity is impossible. From the standpoint of sovereignty states are essentially alike, — equally independent of each other, equally supreme over their citizens, — so that it is only by assuming a sovereignty back of the government that, depending upon its location, a basis for distinction is obtained. At all events no difference of opinion exists as to the possibility of classifying governments; and, since the government of each state is the only outward manifestation of state existence, a discussion of the main types of organization becomes of importance.

78. Forms of government. While no dispute exists as to the possibility of classifying governments, there is no such consensus of opinion as to what the proper classification is. It will therefore be advisable to give several, based on different points of departure, since each will throw additional light on the fundamental nature of the state and of government, and on the relation of the state to the individuals that compose it.

1. If that point of view is adopted which considers each state completely organized in its government, and which considers the government as including the sum total of all the legal political organizations of the state, whether acting at irregular and infrequent intervals or constantly expressing and administering state will, — in this case the fundamental divisions of government would be despotisms and democracies.[1] This classification, however, conveys no idea of structural organization or method of functioning.

(a) By despotism is meant that government in which only a few persons have any share in political power, and in which the mass of the people take no part at any time in exercising or legally influencing governmental authority. Such governments were, until recently, represented by Persia, Turkey, Russia, and China.

(b) By democracy is meant that government in which a large proportion of the population has active political rights, in which possession of suffrage and elegibility to office is widespread, and in which civic consciousness has extended over the mass of the people. Such governments are represented by the majority of modern states, — the British Empire, the United States, Germany, France, Switzerland, and the Argentine Republic being conspicuous examples.

2. Based on the method by which the officials of government are chosen, governments may be divided into hereditary and elective.[2] This distinction obviously does not apply to the government as a whole, since in no state is it entirely hereditary or wholly elective. It does, however, indicate the general method by which states choose their governmental heads and a large number of their governing officials.

[1] Leacock, Elements of Political Science, p. 119.

[2] Burgess, Political Science and Constitutional Law, Vol. II, p. 9.

(a) Hereditary government is that form in which powers are exercised by a person or organization of persons standing in certain family relation to his or their immediate predecessors. The leading forms of relationship existing in modern hereditary governments are:

(1) *Ancienneté:* the oldest member of the family of the deceased, regardless of sex, succeeds to power.

(2) *Ancienneté* in the male line: the oldest male member of the family of the deceased succeeds.

(3) Primogeniture: the oldest immediate descendant of the deceased, regardless of sex, succeeds; or, in case of no issue, the oldest immediate descendant of the nearest ancestor of the deceased, regardless of sex.

(4) Primogeniture in the male line: the oldest immediate male descendant of the deceased succeeds; or, in case of no male issue, the oldest immediate male descendant of the nearest male ancestor of the deceased. The English principle in the descent of the crown is a modification of primogeniture in the male line. It prefers males to females of the same parentage, but admits females of the same parentage as the last male ruler, in preference to males of a more remote parentage.

(5) Appointment in royal family: ruler allowed to appoint the member of his or her family who shall succeed.

(b) Elective government is that form in which powers are exercised by persons chosen by the suffrage of other persons. Such election may be:

(1) Direct: suffrage holders vote directly for the persons to hold office.

(2) Indirect: suffrage holders vote for smaller group, and this in turn votes for persons to hold office.

Both these methods have advantages and are usually combined in modern states. Besides, appointment and competitive examination are largely used in selecting government officials.

In addition to these distinctions governments of modern states differ on two fundamental points. The first has to do with what is ordinarily called division of powers, that is, the distinction between national and various degrees of local governments; the

second, with separation of powers, or the distinction between legislative and administrative departments. Governments, therefore, may be divided into:

1. *Unitary and dual.*[1] Depending upon the relation which the various governmental organizations bear to each other and to the state.

2. *Parliamentary*[2] *and nonparliamentary.*[3] Depending upon the relation of the legislature to the executive.

79. Unitary and dual governments. 1. Unitary government is that form in which governmental authority is fundamentally vested in a single organization, and all other organizations of government within the state owe their existence to, and receive their authority from, this body. For convenience in administration the state may be divided into districts with local governments of their own, but these act only as agents of the central authority and have little protection against central interference or control. Such a form is best adapted to:

(a) A state possessing geographic and ethnic unity.

(b) A state whose population is composed of different and hostile nationalities. In this form, which is usually transitional, some single authority must unite the otherwise antagonistic elements.

(c) A state whose population is not yet politically developed, and hence not fitted for local self-government. Such a condition also may be regarded as transitional.

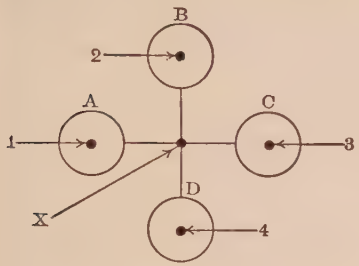
2. Dual government is that form in which ordinary governmental authority is divided fundamentally between two organizations, each having its own definite sphere of authority, and neither having the power to interfere with or destroy the other. Dual government may be subdivided into:

(a) Confederate. In this form several states, each with its own government, create a common government for certain common purposes.

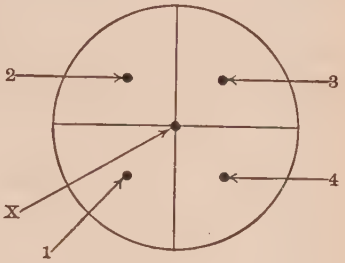
(b) Federal. In this form a single state exists, with the functions of government divided between a central organization and several commonwealth organizations.

[1] Burgess, Political Science and Constitutional Law, Vol. II, p. 4.
[2] Often called *cabinet.*
[3] Often called *presidential.*

This distinction may be made more clear by the following diagrams:



CONFEDERATION



FEDERATION

In the above confederation there are four sovereign states (A, B, C, D), each with its own internal government (1, 2, 3, 4) and one common central government (X). In the above federation there is one sovereign state, with a central government (X) and with four commonwealth governments (1, 2, 3, 4). In the confederation sovereignty remains in each component unit, and their relations are only of treaty nature; in the federation sovereignty resides in the state as a whole, and the component units are, legally, nothing more than convenient government areas.

The confederation is evidently a temporary form of government, and usually results in a growing spirit of unity in consequence of which a single state is formed, the government usually remaining federal. It is of course possible for the states in confederation to destroy the common government and remain entirely separate. At the present time no good example of a confederation exists, although the Swiss, German, and American confederations are comparatively recent. Federations, which will be discussed in a separate chapter,[1] have become common in the past century, and further development of the state promises to be largely along that line.

80. Parliamentary and nonparliamentary governments. 1. Parliamentary or cabinet government is that form in which the tenure of office of the real executive is dependent on the will of the legislature. The real executive, or cabinet, forms at the same time a committee of the legislature, sharing in both the creation and the

[1] See Chapter XIV.

administration of law. Under this form the legislature controls the administration, and no independent action of the executive, unless approved by the legislature, can be successful. Since the legislatures of most modern states consist of two houses, the administration, in practice, tends to come under the control of that house which has greater power over money affairs, — usually the lower house. Parliamentary government is invariably found in those states that have a nominal executive. It is well adapted to a state wishing to retain a hereditary monarch after the state has become democratic, as in the case of England, Italy, and the Netherlands; but the nominal executive may be an elected officer, as is the French president.

Such a system has the advantage of securing harmony between the different departments of government, and the presence of the heads of administration in the legislature keeps it informed on the questions with which it must deal, and makes its policy more consistent than is possible where legislation is shaped by numerous and often ignorant committees. On the other hand, it sacrifices the independence of the executive and of one of the houses, and, in states where more than two political parties exist, leads to unstable coalitions and to a scramble for power at the expense of consistent principle.

2. Nonparliamentary or presidential government is that form in which the tenure of office of the executive is independent of the legislature, and in which the power of the executive is sufficient to prevent legislative encroachment. In few states is the separation complete. Impeachment and removal of the executive by the legislature for certain offenses and the power to override an executive veto are usually found in nonparliamentary governments; but the general principle that the tenure and prerogatives of the executive are ordinarily free from legislative interference characterizes this type. Under this form of government the nominal executive is the real head of the state, whether he be a hereditary monarch, as was the German emperor, or an elected president, as in the United States.

Such a system has the advantage of concentrating responsibility and thus securing caution. It is also energetic and powerful,

because free from that hesitation or disagreement which often accompanies a plural executive. It is well adapted to states that include sections widely diverse in interests, or that have federal governments, and in time of war, or when foreign affairs are of chief importance, is especially valuable. On the other hand, there is the constant danger of deadlock between legislature and executive, and the importance of the executive office makes times of election, in those states where the office is thus filled, periods of disturbance, and in turbulent states even of revolution.

81. Application to modern states. If the above canons of distinction are applied to leading modern states, a remarkable lack of uniformity is found. On the basis of the first distinction alone do the great states agree. While a few backward parts of the earth are still despotic, all the enlightened states are democratic, in the sense that civic consciousness and political rights are widespread. The second classification shows the British Empire, Italy, Spain, Greece, Japan, and the Netherlands to be hereditary; while the United States, France, Switzerland, Germany, and all the American republics are elective. The third classification, into unitary and dual governments, shows an enormous numerical supremacy for the former, as England, France, and the majority of European and American states are included. However, the United States, Germany, Switzerland, Mexico, Brazil, Argentine Republic, and Venezuela serve as examples of the federal type. The fourth division, into parliamentary and nonparliamentary, gives a still different arrangement. The majority of European governments are parliamentary; but Canada, if considered separate from the British Empire, is the only part of America organized in that way. The United States and all the American republics are nonparliamentary, and this class also includes Switzerland and several minor European states.

An analysis of the governments of the United States, England, Germany, and France shows that, while they are all democratic, England is hereditary and the United States, Germany, and France are elective; England and France are unitary and the United States and Germany are dual (federal); England, France, and Germany are parliamentary and the United States is nonparliamentary. An

interesting fact in this connection is that while in the former German Empire the hereditary monarch was the real executive, in England he is a mere figurehead; and that the elected president in the United States possesses powers much like those of the earlier monarchs, while the elected president in France is in much the same position as the hereditary king of England.

While leading governments thus disagree in their fundamental organization, the relations of states to their citizens and the workings of modern governments in actual practice show marked similarity. The government of each state is, after all, a unit whose business it is to express and administer the state's will, and the liberty that modern states grant to individuals and the general functions that governments perform, suggest similarity rather than contrast. The form of government depends largely upon historic evolution and upon local conditions, but the fundamental relation of the government to the state on one side and to the individual on the other is not widely variant at present in the chief states.

If, on the basis of the preceding classification, present tendencies in governmental forms are examined, several points of interest may be discovered. It seems scarcely necessary to state that the modern political world is drifting away from despotic government. All enlightened states have already emerged from that form; and, as political consciousness arises in the few states where it still lies dormant, they also, by peaceful or revolutionary processes, must extend a share in political power to a constantly widening class.

Hereditary government is also declining. The last century has witnessed the establishment of a number of states without that element in their organization, and in those states where it remains as a remnant of feudal times it is growing increasingly unpopular. All over Europe hereditary monarchs have been compelled to resign executive authority to cabinets responsible to elected legislatures, and the hereditary upper houses have lost power to popularly chosen assemblies. Whether the officials of future states will be chosen by direct election, by indirect election, by appointment, by civil-service examination, or by a combination of several or all of these, it is difficult to foretell; but that the "accident of birth" will play a part of diminishing importance seems inevitable.

From the standpoint of the third and fourth canons no such definite tendencies can be discovered. On the contrary, there seems to be a strong movement toward compromise in both respects. Those states that have been most centralized in their organization show a tendency toward federalization, especially in administration. The growth of colonial empires and the democratic development that demands local self-government are both opposed to the complete unitary system. At the same time modern federations are becoming more centralized. The growth of common interests, of common external policy, and the necessity for uniformity in legislation tend to increase the authority of the central government and to reduce the commonwealths to the position of administrative districts.

A similar condition exists relative to parliamentary and nonparliamentary organization. In parliamentary governments there is a movement toward greater independence on the part of the executive; in nonparliamentary governments the necessity for harmony in procedure and policy leads to a closer connection between executive and legislature. The work of political parties, which perform similar functions under both forms, further tends to break down the distinction.

What form the governments of the future will take it is difficult to predict, but present tendencies indicate an elective democracy, combining certain elements of both unitary and federal forms and certain elements of both parliamentary and nonparliamentary forms. Striking illustrations of these general tendencies are shown by the facts that while the United States has been building up a federal empire, England is agitating imperial federation, and that while the English prime minister and cabinet are becoming more independent of Parliament and more directly responsible to the people, the United States, in its Speaker and Steering Committee, is creating a prime minister and cabinet, the leaders of the party in power in Congress.

OUTLINE OF CHAPTER XIV

REFERENCES

FORMS OF UNION

1. UNORGANIZED
    - *a.* Alliances
    - *b.* Protectorates
2. ORGANIZED
    - *a.* International administrative unions
    - *b.* Monarchial unions
        - (1) Personal
        - (2) Real
    - *c.* Confederations

NATURE OF FEDERAL GOVERNMENT

DISTRIBUTION OF POWERS

ADVANTAGES AND DISADVANTAGES OF FEDERAL GOVERNMENT

1. ADVANTAGES
2. DISADVANTAGES

CHAPTER XIV

FEDERAL GOVERNMENT

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82. Forms of union. One of the most striking features of recent political development is the formation of various degrees of union among states. A consideration of the nature of these unions, their effect on the sovereignty of the component states, and the forms of government thus established will serve to introduce a more important type of political life, — the federation. Considerable difficulty confronts an attempt to classify these unions, although German writers have worked out elaborate subdivisions.[1] A fundamental distinction may be made between unorganized and organized unions.

In the former, states enter into relations for regulation of mutual interests, but form no common government, each state acting through its own governmental organs. In the latter, permanent

[1] Jellinek, Das Recht des modernen Staates; Die Lehre von den Staatenverbindungen.
Laband, Das Staatsrecht des deutschen Reiches.
Brie, Theorie der Staatenverbindungen.
Waitz, Das Wesen des Bundesstaates.

central organs of government are created. Examples of unorganized unions are alliances for offense or defense, for guarantee of neutrality, etc.; and protectorates, in which a certain control, usually over foreign relations, is exercised by a stronger over a weaker state. A special form, called by German writers *Staatenstaat*, is the union of a superior and an inferior state, "the latter receiving orders from the former as from a foreign power, but the citizens of the inferior state owing allegiance only to their own state." [1] Of such unions the relation of the medieval German Empire to its feudal components and of Turkey to Egypt are examples.

The exact effect of such associations on the sovereignty of the component states is one of the most difficult points in political science. Every treaty is at least a formal limitation on sovereignty, since in it the sovereign promises to do or to refrain from doing certain things, or to act in a certain manner. But as long as the states forming such unions are free to withdraw from them, or if force is the only method to maintain or extend their provisions, the sovereignty of the separate states remains. Therefore, unless such unions have reached the point at which one party has become a mere province of the other, which may legally alter their relations as it sees fit, there is no legal union. Each state retains its sovereignty, and no step toward a permanent fusion of separate states is involved. In actual practice, however, a clear distinction is often impossible, and international usage is not consistent.

Organized unions, possessing a common government, may be divided into:

1. International administrative unions, in which permanent commissions are created by two or more states for the regulation of certain common interests. Examples are the international postal and telegraph unions, and the commission that regulates the navigation of the Danube.

2. Monarchial unions, in which states, retaining their separate sovereignties and constitutional rights, are joined under a common ruler. If this union is deliberate, resting on a permanent provision for such connection, it is called a *realunion*. Of such a nature

[1] Willoughby, The Nature of the State, p. 235.

was the relation, until recently, of Norway and Sweden. Austria-Hungary, although possessing additional common governmental organs, is another example. If union under a common ruler is accidental, through descent or other circumstance, it is called a *personal union*. Such have been the relations between England and Hanover, and between Holland and Luxemburg. Such unions last only during the reign of the common monarch, who may be regarded as possessing separate political personalities in each of the states.

3. Confederations, in which states create a common government and delegate to it authority over certain affairs, each state having its own government for all affairs not delegated to the central government. The essential nature of a confederation, as before indicated,[1] is the fact that the states composing it retain their sovereignty and are legally free to withdraw from it if they so desire.

The point of similarity in all these forms of unions, unorganized and organized, is that they are not states. In each case sovereignty is located in the units composing them, the relations are essentially international, and no juristic union exists. In no case is there any authority, outside of these component units, with the right to determine its own competence or to exercise coercion. While the unions may differ in degree from mere alliances, in which there is no common government and the mutual interests are of the slightest nature, to confederations, in which a common government may be given large and varied powers, — in essence they are alike. They are agreements among states and not states themselves.

83. Nature of federal government. In contrast to the various forms of union among states may be considered that type of political life in which the separate units, retaining their governments and control over certain internal interests, have lost their sovereignty and exist as component parts of a single state. As previously indicated,[2] governments, in so far as the relation of central to local authorities is concerned, show two main types, — the unitary, and the dual. This is largely the result of the historic

[1] See section 79. [2] Ibid.

development of modern national states from medieval feudalism. Even earlier, however, the dual, or federal, principle had been worked out to a degree in the various leagues of the Greek city states, in the famous Achæan League approaching closely the formation of a real federal state. As growing national spirit and improving organization began, toward the close of the Middle Ages, to expand the areas of political units, two methods mainly were followed:

1. One was that of complete fusion, the separate governments of the combining units being merged into a single organization. Sometimes this took place voluntarily and peacefully when a spirit of nationality was well developed and local differences slight, as in the case of England and Scotland, or, more recently, in the formation of the kingdom of Italy. Usually it resulted from conquest and expansion, as a more powerful state extended its boundaries, regardless of the wishes of the peoples that it incorporated, and at the expense of their local political organization. Such was the formation of the French kingdom and of the British Empire as a whole. By both of these processes, however, states with unitary governments were formed. The component parts either lost their identity completely or became mere districts of administration, subordinated legally to the authority of the central government.

2. The other method was that of voluntary federal union. States whose nationality or situation was such as to make union desirable, but whose local differences were too great to permit complete amalgamation, or whose strength was too nearly equal to make conquest possible, were able to unite on this basis. The component parts retained their government, with constitutional rights over certain affairs, but they gave up their sovereignty to the new state that was formed by their union. A central government was created with certain powers, but neither central nor local governments could legally encroach upon or destroy the other. Such a state was usually formed after a gradual process, passing through various degrees of alliance and confederation before the necessary national spirit arose. Examples of such states are the United States, the German republic, Switzerland, and, considered apart from the British Empire, Canada and Australia. Several

states, including Mexico and Brazil, have voluntarily adopted the federal principle, not as a means of union, but for the purpose of adjusting national and local interests.

The political process by which a federation is formed and the location of sovereignty within it are much-disputed questions. It has often been held that a federation is formed by voluntary union of sovereign states, as if a new state could be created by a compact among states. Evidently such an agreement would be merely a treaty, since by that method alone can states enter into mutual relations. Besides, such a compact would be valid only so long as the contracting states retained the sovereignty that made them competent to enter into it. By a contract it is impossible to create an authority superior to the contracting parties; hence a union formed on this basis could be nothing more than a confederation of states. No single sovereign would exist, each state would be competent to determine its own rights and attributes, and any common government that might be created would derive its authority from the individual states that it severally represented.

In forming a federation, therefore, it must be held that the separate states disappear, their sovereignty being destroyed; and their citizens, having divested themselves of the old allegiance, create, on the basis of national unity, a federal state. The formation of a federation, like the formation of every state, is a revolutionary act. Its foundation rests not on the authority of any preëxisting political body but on itself. The former units reappear as commonwealths under the federal constitution, but their sovereignty is gone, and they differ in no essential legal way from administrative districts. However powerful their historic associations may be, or however large may be the powers delegated to them, they owe their position and powers to a superior authority and have no legal status except in the union. Not the amount of powers exercised, but the right to determine how much power they may exercise, determines sovereignty, and this right the former states have lost.

In a federation, then, sovereignty lies neither in the federal government nor in the commonwealths. Neither is it divided between them, as many writers of the early nineteenth century

held. It resides in the state itself, both central and local governments being its agents, neither being able to determine its own competence or to destroy the other. In the federal constitution both governments are created and their respective powers outlined; and in the sum total of all legal lawmaking bodies in the state, federal and commonwealth, including those bodies that may legally amend the constitutions, the exercise of sovereignty is vested.

84. Distribution of powers. In federations the distribution of powers between the central and the various local governments becomes of prime importance. While differences in detail characterize this feature, modern federal states show sufficient uniformity to make general statements possible. All agree in giving to the central government control over certain functions essential to state existence, such as the maintenance of army and navy, the conduct of foreign affairs, and the power to raise money. In addition, such functions as the regulation of coinage and currency, of patents and copyrights, of naturalization, and of the postal service, which are of value only when uniform over the entire state, are generally given to the central government. At the other extreme are affairs of local concern alone, or those demanding different treatment because of sectional differences, that are properly left to the governments of the component units.

Between these lies a vast field of interests concerning whose control the practice of present federations and the opinions of statesmen show marked divergence. This list includes such questions as the regulation of transportation and communication, of labor, of marriage and divorce, of public education, and of civil and criminal law. In the authority over these interests granted to the central government, the constitutions of federations differ. That of the United States is practically silent on these points, and the clause leaving to the commonwealths all powers not expressly granted to the national government evidently was intended to remove them from federal jurisdiction. The constitution of the German republic grants to the central government additional authority over banking, criminal and civil law, railroads, insurance, and minor matters. In Switzerland, while the power to levy direct taxes is withheld, the central government has authority over

railroads, factory labor, insurance, alcoholic liquors, etc., together with certain powers over religion and education. In the federal governments of Canada and Australia, each of which rests on a statute of the British Parliament, similar wide powers are granted to the central organs.

In all these federations there is a marked tendency toward increasing authority on the part of the central government. This is partly due to the changing conditions of modern life. Large-scale production, the development of transportation and communication, wider markets, and increasing interdependence of sections formerly economically independent cannot fail to affect correspondingly the powers of government. Not only is the spirit of unity increased, but interests formerly local outgrow regulation at the hands of any except the widest governmental authority. Modern business is national or even international rather than local. Besides, the creation of a federation is itself a step toward further unity. The existence of a common government, whose working becomes increasingly familiar to all citizens, cannot fail to strengthen the national spirit, whose beginnings at least the federation indicated. Common action, particularly in war or foreign relations, increases national at the expense of local patriotism; and the former units, losing their political identity, tend to become mere convenient districts of administration. Integration, accompanied by differentiation and interdependence, seems a law in the political as well as in the biologic world.

In adjusting the legal distribution of powers to this tendency toward national unity several methods are in use. Ease of amendment, by which change in conditions and in sentiment may express themselves through the written constitution, redistributing authority as occasion demands, is one way of meeting the situation. The constitution of Switzerland, which demands for amendment only the assent of a majority of the voters and of the component cantons, is an example. The plan of concurrent jurisdiction, in which the powers of the governments are not declared exclusive, allowing the local governments to act where the federal government has not done so, providing that their acts are not inconsistent with federal laws, serves a similar purpose. In this way the central

government may expand its authority as national development requires, acting in a legal way and at the same time avoiding frequent tinkering with the constitution. Such concurrent jurisdiction is provided in the constitutions of the German republic and of Australia. When a federal constitution excludes each government from sharing the authority of the other, and is also difficult to amend, neither of these processes is possible. If, in addition, the powers granted to the central government are limited, the situation is particularly difficult. This is the case in the United States Constitution, and has been met in a peculiar way. By the doctrine of "implied powers" the Supreme Court, in interpreting the Constitution, has stretched its meaning to give the central government authority never dreamed of by its founders. The brevity of the Constitution, making an elastic interpretation possible, and the political ability of the American people have enabled a constitution, framed at a time when local differences prevented large grants of federal power, to adapt itself to the growing spirit of national unity and to the changed conditions of modern life.

85. Advantages and disadvantages of federal government. The chief purposes for which states exist may be summed up as external protection and internal regulation. From the standpoint of the former, extension of the state over considerable area is desirable, both in removing the possibility of conflict among separate units and in increasing the efficiency of the whole. In former times conquest was the only effective method of state extension. In this process the weak were subordinated to the strong, often with the loss of their political privileges, and danger of external conflict was merely changed to danger of internal revolt as soon as opportunity offered. From the standpoint of internal regulation the only effective method known to early states was that of rigid uniformity, enforced by a central authority over the entire area of the state. This policy of external conquest and internal uniformity was perfected by Rome. However, it sacrificed the individual, prevented progress, and fell to pieces from the evils inherent in the system. What was needed was a method by which small units could unite peacefully without sacrificing their political life, so that each part could form a contented and integral part of the whole. Besides,

some method must be found to combine uniform regulation of common interests and local control of local affairs, so as to combine stability and progress, — union and liberty.

Federation is the method by which several modern states have solved this problem. Voluntary union on practically equal terms has made possible incorporation without conquest. The control of general interests by a central government, leaving questions that differ in different sections to the people of those areas for solution, combines the strength that results from unity with the vitality and progress that result from variety. In foreign affairs a united front may be presented and a consistent policy pursued ; at the same time, each internal unit may shape its laws in conformity with local customs and conditions. With the exception of representation, probably nothing has done more to make democracy workable over large areas than the principle of federal government. It stimulates interest in political activity, enables small areas to try experiments that might be fatal in larger units, diminishes the dangers that threaten a state composed of diverse nationalities or interests, and relieves the central government of many burdensome functions. Under special conditions federation is particularly valuable. It enables a growing spirit of nationality and unity to manifest itself, even though local differences are powerful enough to prevent complete fusion ; and, as a means of expansion and development in a new country, allows special needs to be met as they arise, and frontier conditions to be dealt with in a way unsuited to longer-established sections. The formation of Germany and the United States and the growth of the latter serve as examples. Federalism has thus been the means of uniting many small states which otherwise would never have surrendered their independence ; at the same time, in the internal organization of the large state formed by their union, the federal system has prevented the rise of a despotic centralized authority and has conserved the political liberty of the people.

The advantages of the federal system, if misused, make possible corresponding dangers. If disputes or divided authority that should be limited to internal affairs are carried into foreign relations, a federation is handicapped when opposed to a more centralized

state. Similarly, if affairs of general interest demanding uniform treatment are left to the caprices of a number of governments, evils follow. As conditions change, what might formerly have been safely left to the separate units for decision may later demand regulation on a larger scale. The proper adjustment of central to local governments thus becomes a constant source of difficulty, and the danger of rebellion or the formation of sectional factions is always present. To all these defects — weakness in foreign affairs, lack of uniformity in legislation or administration, and disputes concerning the powers of national and commonwealth governments — history and present conditions in the United States bear witness. The expense and delay caused by a double system in which much work is needlessly duplicated are recognized as serious objections to federal government, and the unsuitability of the system to a people disinclined to reverence the law and unwilling to acquiesce in frequent compromises is obvious.

In recent years some of the defects of federal government have become particularly noticeable. This is, in the main, the result of the growing importance and complexity of economic and industrial conditions, which demand uniformity of regulation. Hence attention is no longer turned to the obvious strength of the federal system on its political and external side, but to the weakness of the system on its economic and internal side; and, as that industrial integration which seems to be the present method of economic progress continues, the federal form of organization may be compelled to give way to a more centralized government, capable of regulating, or, if need be, of taking control of the extensive economic activities of modern civilization.[1]

Naturally, then, there is considerable difference of opinion concerning the future of federal government. The form of organization suited to one people or to one time may be entirely unsuited to another society or another stage of development. The federal system was created by the needs of the times, and, having accomplished its purpose, it may prove to be but the transition stage to a more efficient system, better suited to the conditions then existing.

[1] Leacock, "Limitations of Federal Government," Proceedings of the American Political Science Association, Vol. V (1908).

At the same time there are certain advantages inherent in federalism, and some of its contributions to political methods will probably be permanently valuable. While federal states show signs of closer unification, unitary states are adopting many features of federalism. Germany, Mexico, and Brazil have deliberately chosen to adopt the federal form of organization; almost all the self-governing British colonies are now combined in federated groups; and imperial federation for the British Empire is seriously urged. Present political expediency, as well as past political necessity, has found value in federalism, and many writers predict a further unification of states, at present independent, on a federal basis.

OUTLINE OF CHAPTER XV

REFERENCES

NATURE OF CONSTITUTIONS

1. WRITTEN AND UNWRITTEN CONSTITUTIONS
2. CONSTITUTIONAL AND STATUTE LAW
   - *a.* As to method of creation
   - *b.* As to content

REQUISITES OF CONSTITUTIONS

1. DEFINITE
2. COMPREHENSIVE
3. BRIEF

CREATION OF CONSTITUTIONS

AMENDMENT OF CONSTITUTIONS

1. ADVANTAGES OF SPECIAL METHOD OF AMENDMENT
2. METHODS IN USE
   - *a.* Ordinary legislation
   - *b.* Special organs or special procedure
   - *c.* Popular referendum
3. QUERIES CONCERNING CONSTITUTIONAL AMENDMENT
   - *a.* In case no provision for amendment is made
   - *b.* In case amendment is forbidden
   - *c.* In case legal method of amendment is provided

CHAPTER XV

CONSTITUTIONS

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86. Nature of constitutions. The fundamental principles that determine the form of a state are called its constitution. These include the method in which the state is organized, the distribution of its sovereign powers among the various organs of government, and the scope and manner of exercise of governmental functions. The constitution does not create the state, but is the outward formulation of state existence. Every state, therefore, has a constitution. In recent years it has become customary for states to put certain of these principles into written documents, calling these their constitutions, and a distinction is often made between those states, such as the United States, Germany, and France, having written constitutions; and others, such as England and Hungary, whose organizations rest upon long-standing custom or upon scattered laws, variously created.

In reality this distinction is of little value. No constitution is entirely written or entirely unwritten. That of England, largely unwritten, contains such written documents as Magna Charta, the Bill of Rights, the Act of Settlement, and the statutes of the past century regulating the system of representation and the exercise of suffrage. On the other hand, the United States Constitution, fundamentally written, includes many principles not found in that document, — the organization and powers of political parties, the method of choosing the president, and the opposition to a third term serving as examples.

It is often thought that a written constitution safeguards individual liberty, acting as a check on the arbitrary authority of government. This is not necessarily true, depending upon whether or not constitutional provisions may be changed by the ordinary government. The constitution of Italy, though written, may be legally changed by a regular act of the Italian Parliament, and nothing but public opinion stands between government and individual. Even when restrictions are placed on governmental organs, the question of enforcing these restrictions remains. The new German constitution grants elaborate civil rights and provides for amendment by popular vote. The United States alone makes the courts a legal check on unconstitutional governmental activity. A written constitution does not in itself guarantee individual freedom.

Another distinction often erroneously emphasized is that between constitutional law and statute law, considering the former of superior, and the latter of inferior, validity. A preceding chapter[1] indicated the fallacy of this point of view. From a legal standpoint all laws are commands of the sovereign, enforced by its authority. Any organ of government, acting legally within the scope of its authority, creates law just as binding as is the constitution. When a law is declared "unconstitutional," it is not considered that a lower law has come into conflict with a higher law, but that the law in question never was law, since it was not properly created. There is, then, no difference in validity between constitutional law and statute law. Each, if legally created and enforced by the

[1] See Chapter X.

authority of the state, is law, equally binding. Distinction between constitutional and statute law may be made:

1. *As to method of creation.* Statute law is usually created by the ordinary government; that is, by legislatures, either national or local, with original or derived powers. Constitutional law in many states is created by a peculiar organ of government or by unusual procedure on the part of the ordinary government. In some states, as in England and Italy, even this distinction does not exist, since constitutional law is created and repealed by the ordinary government. A later section[1] will consider the various methods of creating constitutional law.

2. *As to content.* Constitutional law, as already indicated, properly deals with the fundamental organization of the state. The minor details of government and the ordinary relations of man to man are properly left to statute law.

The nature of constitutions, accordingly, may be summed up as follows. The form of a state is called its constitution. In all states this is partly unwritten and partly written. In so far as it is unwritten, enforced only by public opinion, it is not strictly *law;* while the written constitution often contains elements that are not properly *constitutional.* No difference in validity exists between constitutional law and statute law, since each is law only if legally created and enforced by the sovereignty of the state. As to method of creation or nature of content, constitutional law, often formed in an extraordinary way, and outlining in general the nature and powers of government, may be distinguished from such detailed rules of administrative law or such regulation of private affairs as are created by the ordinary government. The constitution of a state, therefore, consists of that mass of custom, those fundamental and often revolutionary-formed principles, and such laws, created by special or regular organs, as, combined, determine the organization of the state.

87. Requisites of constitutions. A good constitution possesses several general characteristics. It is:

1. *Definite.* In order to avoid occasion for dispute, there should be no question as to what the constitution is or what it means. In

[1] See section 88.

this respect written constitutions, if carefully worded, are more satisfactory than unwritten constitutions. From the time of the Ten Commandments and the Twelve Tables of Roman law, the tendency in legal development has been toward definite statement, so that the law may be known and preserved.

2. *Comprehensive.* The constitution should cover the whole field of government. In a general way, at least, it should make provision for the exercise of all political power, and sketch out the fundamental organization of the state.

3. *Brief.* In outline alone should the constitution organize the state. There are several objections to a detailed code. An extensive constitution offers many possibilities for dispute as to meaning. Besides, a detailed constitution indicates distrust of government. Legislatures deteriorate and avoid responsibility if matters of importance are removed from their authority and decided in the constitution. Finally, a detailed constitution is soon outgrown. New conditions render some of its provisions obsolete, and, either by frequent amendment or by nonenforcement, it becomes unstable or unrespected. The Constitution of the United States contains about four thousand words; that of the German republic is several times as long. The "constitutional laws" of France, combined with the "organic laws," which are properly a part of the constitution, are a trifle less extensive than the constitution of the German republic. On the other hand, recent constitutions drawn up by several of the American commonwealths contain upwards of fifty thousand words, including minute regulations that have no proper place in a constitution.

Given a constitution that is definite, comprehensive, and brief, its necessary contents demand consideration. Its purpose is to create a government, outline the powers of its various organs, and prescribe the general manner of their exercise. It should also provide a method of amendment, and set aside a sphere of individual liberty into which no part of the ordinary government may enter. A further analysis shows that the constitution indicates the various divisions and departments of government. It prevents encroachment of one organ of government on another, or on individual liberty. In a word, it locates sovereignty within the state; since, in

outlining the powers of the various governmental organs and in providing a method of changing the constitution, arrangement is made for the total legal exercise of lawmaking power. The action of any organ outside the scope of its legal competence, or in any manner except that prescribed, is not an act of the state, but a revolution, and can be justified only on the ground that the former state was destroyed, a new one created, and sovereignty relocated. An "unconstitutional law" is thus a contradiction in terms.

A final requisite demands that a constitution shall correspond to existing conditions within the state. Sovereignty should be legally distributed in accordance with actual political power; that is, the potential sovereign should coincide with the legal sovereign, otherwise there is constant danger of revolution. No constitution is perfect, since the best form of government is a relative term, changing as conditions change. A constitution, therefore, should be flexible enough to permit change when necessary; at the same time, its modification should not be so easy as to sacrifice stability. The adjustment of these requisites depends largely upon the method of amendment.

88. Creation of constitutions. The constitution of a state comes into existence with the state itself, arising from the feeling of unity which creates the state and of which the constitution is the formal expression. Serving as the starting point of law, its own origin is found in revolution. Sometimes by gradual process a people pass from unorganized, unpolitical life, through various forms of control, into a state; more often, by force or by agreement, preëxisting political forms are disrupted or combined, and new states arise on old foundations.

Of those constitutions resting partly on custom and usage, partly on a series of decrees and statutes, that of England is the best remaining example. The successive revolutions by which it was formed were less violent than is usually the case; and for this reason, probably, it still remains largely in unwritten form, and what is written is scattered through different acts instead of being concentrated in a single document. In the beginning of England's national life the laws of the strong Norman monarchy were grafted on Anglo-Saxon customary usage. The granting of Magna Charta

marked the revolution that changed a monarchic into an aristocratic constitution. The growth of political consciousness led to further fundamental changes by which sovereignty was increasingly exercised by popular representatives; and later revolutions, or, as they are usually called, reforms, widened the suffrage and reapportioned representation. At the same time, political parties and the cabinet system were growing up, largely as a matter of convention rather than of law. In this process the constitution followed changes in actual conditions with but little violence, often retaining old forms after they had become mere fictions. The constitution of Hungary had a similar development.

Within the last century and a half most states have drawn up written constitutions. This idea originated in America, resulting from the charters granted to the commercial-colonial companies that opened up the New World. In addition to land grants and trading monopolies, these charters provided a frame of government, and when the company migrated to America, it soon formed a political rather than a commercial corporation. Another step toward the formation of written constitutions resulted from the covenants or agreements for self-government that the American colonists drew up. Of these the most important were the *Mayflower* compact (1620) and the Fundamental Orders of Connecticut (1639). These were created partly because the colonists, cut off from England and neglected by her, needed some form of authority; and partly in imitation of the colonial system of self-government in church affairs. Even in England, during the time of Puritan supremacy, similar ideas held sway, and Cromwell's Instrument of Government (1653) was practically a written constitution. However, the restoration of monarchy (1660) destroyed this constitutional tendency in England, while in the colonies it developed without interference. It was then quite natural that the colonies, on becoming independent of England, should draw up written constitutions (1776–1780), and that the same idea was experimented with in the confederation (1781) and perfected in the federal Constitution (1789). The revolutionary basis of this document is evident when it is remembered that it went into effect when ratified by nine "states," although the existing confederation

required unanimous consent for its dissolution. This instrument, practically unchanged in letter though broadened in spirit, still serves as the framework around which the government of the United States is built.

During her revolution France, in imitation of America, created a series of written constitutions (1791–1799); and although none of these was permanent, the idea survived in France and influenced the remainder of Europe. Under Napoleon constitutions were issued to various Italian states, and temporary constitutions were declared in Spain. To appease the liberal tendency of the times and to secure united support in war against Napoleon, constitutions were promised by several rulers and actually granted in a few German states, but the reactionary movement that followed the downfall of Napoleon checked for a time constitutional growth. After the Revolution of 1848 a number of written constitutions were issued, and while some were destroyed in the reaction that followed, the principle has never since lost ground. At present, with the exception of England, Hungary, and the despotic monarchies, all the important states of Europe and America have written constitutions, and even commonwealths and colonies are organized on the basis of fundamental written documents.

The present constitution of France was the outcome of the Franco-Prussian War of 1870. When Sedan fell and the emperor was captured, the imperial government of Napoleon III fell to pieces. The Third Republic was proclaimed by the leaders in Paris, and a National Assembly, elected by manhood suffrage, ruled from 1871 to 1876 and created the present constitution. While the majority in this body favored monarchy they were not united; hence a republic was established, which few believed would be permanent. For this reason the constitution, drawn up in 1875, was a mere outline, leaving many things to be settled by ordinary legislation and providing an easy method of amendment. The Assembly, accordingly, made a distinction between:

1. Constitutional laws, which can be amended only by special process.

2. Organic laws, which can be changed by ordinary process of legislation.

The only important amendment of constitutional law was in 1884, when the composition and powers of the upper house were changed and left on an organic basis. The organic laws dealing with the election of the lower house have been several times changed.

The original constitution of the German Empire was also the result of war and revolution. In this case, however, it crystallized national spirit and created a state out of formerly separate sovereignties. In 1815, when Napoleon's work was undone, a loose German confederation, under the presidency of Austria, was at least sufficient to prevent entire separation. The customs union (*Zollverein*) formed by Prussia in 1833 gradually came to include all the German states except Austria, laying the basis for later political union and Prussian supremacy. From 1848 to 1850 most of the German states secured written constitutions, and an attempt was made at the same time to form a closer union under the headship of Prussia. For this plan the time was not yet ripe, but in 1866 the final break between Prussia and Austria led to a brief war in which Austria was defeated and excluded from German affairs. This destroyed the confederation of 1815, Prussia and the adjacent states forming the North German Confederation, the states of south Germany remaining outside. A new customs union (1868) and secret treaties bound together these two sections, and Prussia's brilliant military successes in the Franco-Prussian War fused them into a unity. The south German states entered the North German Confederation; the Prussian king was urged by the other rulers to take the title of German Emperor, and in 1871 a parliament of all Germany ratified the constitution. The present constitution of the German republic was adopted in 1919.

89. Amendment of constitutions. The vital point in a constitution is its method of amendment. Upon that depend the guarantee of individual liberty and the degree to which the written constitution corresponds with actual political conditions. If the constitution may be changed by the ordinary method of legislation, as is the case in the unwritten constitution of England and in the written constitution of Italy, the individual has no legal protection against the government. The distribution of powers within the government

may give him legal protection against certain organs, and by the consent of the government he may enjoy certain immunities against the entire government, but at any time these may be modified or destroyed by ordinary legislative methods. If the constitution cannot be changed by the usual method of legislation, as is the case in most states, individual liberty enjoys a certain protection against the ordinary government. The actual working out of this principle depends upon the method of enforcing the constitution. In the absence of courts that have the right to decide between government and individual, nothing short of revolution (except for a mere protest) can prevent governmental encroachment, in spite of constitutional provisions. This was exemplified in Prussia, where king and upper house for a time (1860–1865) controlled taxation regardless of the constitutional rights of the lower house. In the United States the enforcement of constitutional limitations rests in the courts. This serves as a special guarantee of individual liberty, with the corresponding disadvantage that the courts in "interpreting" the constitution often actually exercise large powers of amendment. The expansion of the United States Constitution by the Supreme Court under the doctrine of "implied powers" is familiar to all.

The method of amendment also determines the ease with which the constitution keeps pace with changing conditions. If the constitution may be amended easily, by a method that enables the political sovereign to express its will, there will be no discrepancy between actual conditions and legal organization. The chief danger will be that of instability, since the fundamental form of the state may be changed by temporary gusts of popular opinion. If the constitution is difficult to change, or if amendment follows a method that does not enable the political sovereign to express its will, one of two things will probably occur. Either, as conditions change, a large number of extra-legal institutions, supported by public opinion, will develop, practically amending the constitution; or, in the absence of this method of amendment, there will be danger of a revolution that will legally distribute sovereign powers in accord with actual political conditions.

From what has been said two conclusions may be drawn:

1. That, for the sake of stability and as a guarantee of individual liberty, certain fundamental principles should not be modified by the usual procedure of the ordinary government. Among these may be mentioned: [1]

(a) Mode of selection and dismissal of the officials forming the fundamental framework of government, such as members of the legislature, chief executive officers, and judges.

(b) Distribution of functions among the various organs of government, such as the relation of legislature to executive or of central to local organs.

(c) Form of procedure in general organs of government, such as the legal method by which a law may be created.

(d) Limitation on the means that an organ of government may use, even in attaining legitimate ends, such as a prohibition against *ex post facto* laws or against laws impairing obligation of contract.

(e) Limitations on governmental interference in sphere of individual liberty, such as guarantee of freedom of religion, equality before the law, etc.

2. That some method of constitutional amendment should be provided by which the legal organization of the state may be made to correspond with existing political conditions. The actual methods by which modern states legally amend their constitutions may be classified as follows:

(a) Ordinary legislation, as in the case of England or Italy.

(b) Special procedure or special organs of government. In France the two houses of the legislature in joint session may, by ordinary majority vote, change constitutional laws. In Germany the constitution may be amended by a two-thirds vote of the lawmaking bodies or by a majority of the qualified voters in a popular referendum. In Spain a special parliament is elected on the issue of the proposed amendment. In the United States, amendments may be proposed by two thirds of both houses of Congress or, at the request of the legislatures of two thirds of the commonwealths, by a convention called by Congress for that purpose, and must be ratified by the legislatures in three fourths of the commonwealths or by conventions in three fourths

[1] Sidgwick, Elements of Politics, p. 540.

of the commonwealths, Congress having the right to determine the mode of ratification.

(c) Popular referendum. The essence of this method is that an amendment, proposed either by the legislature or by a petition signed by a certain number of citizens, must be submitted to the people and ratified by a majority vote. In Switzerland and Australia, where this method is in use, the consent of a majority of the commonwealths, as well as of a majority of votes cast, is required. In the United States commonwealths proposed constitutions are usually referred to popular vote for ratification. This method of constitution-creating by popular vote is a step in the separation of state and government, since it recognizes that the people and not the government should create constitutional law. There is, of course, the accompanying danger that the hands of government may be tied by detailed constitutional provisions.

Several queries regarding constitutional amendment may arise : [1]

1. *In case a constitution makes no provision for its own amendment.* In this event either the government by ordinary legislation, as is the case in Italy, whose written constitution makes no provision for amendment, or the extra-legal authority that originally created the constitution, may amend it.

2. *In case a constitution forbids its own amendment.* This prohibition would be binding on all organs of government created by the constitution, but not on the extra-legal authority that originally created the constitution. Such change, however, would be revolutionary, and, if acceded to, could be legalized only as the act of a new sovereign.

3. *In case the constitution provides a legal method of amendment.* In this case a strict political science would hold that that particular method must be followed. Any other, no matter by how large a majority, would be a revolution. The state's will can be expressed only in the form of law ; an illegal act is never the act of the state. There are, however, many constitutional lawyers who hold that the original method by which a constitution was created may legally be put into operation to amend it, even though the constitution makes no specific provision for that mode of procedure.

[1] Willoughby, The Nature of the State, pp. 214–219.

In conclusion it should be emphasized that constitutions grow, instead of being made, and that no constitution can be regarded as final or unchanging. Unwritten constitutions are constantly modified as the result of new conditions and new political ideals; written constitutions are changed by usage, by judicial interpretation or construction, and by formal amendment. In states whose civilization is long-established, reverence for tradition leads to constitutional development by usage to a greater degree than is the case in newer societies, where constitutions are elaborate in detail and frequently revised. Judicial interpretation in determining the true meaning and intention of the constitution, and judicial construction in applying the constitution to contingencies not provided for, are important means of growth, especially in the United States. Expansion by formal amendment is, of course, the usual and most prolific source of change, no modern constitution being considered complete unless provision is made for a legal method of alteration.

PART II

THE ORGANIZATION OF GOVERNMENT

OUTLINE OF CHAPTER XVI

REFERENCES

REQUISITES OF A DEMOCRACY

1. CIVIL LIBERTY
2. POLITICAL LIBERTY
   - *a.* Extent of the electorate
   - *b.* Control exercised by electorate over government
   - *c.* Direct popular government

EXTENT OF THE ELECTORATE

1. AGE
2. SEX
3. CITIZENSHIP AND RESIDENCE
4. PROPERTY
5. MENTAL AND MORAL QUALIFICATIONS

CONTROL OF ELECTORATE OVER GOVERNMENT

1. REPRESENTATION
2. ELECTION
3. LOCAL SELF-GOVERNMENT
4. POLITICAL PARTIES
5. PUBLIC OPINION

INITIATIVE AND REFERENDUM

MINORITY REPRESENTATION

1. DISTRICT TICKET
2. LIMITED VOTING
3. CUMULATIVE VOTING
4. PROPORTIONAL REPRESENTATION
5. REPRESENTATION BASED ON WEALTH

CHAPTER XVI

THE ELECTORATE

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90. Requisites of a democracy. The strength and stability of modern states are usually attributed to the fact that they are *democratic*. A comparative study of their governments should therefore be preceded by a more careful analysis of this term. As already indicated,[1] it includes two concepts:

1. Civil liberty, or exemption within a certain sphere from interference on the part of individual or government.

2. Political liberty, or the right to share in exercising the authority of the state. Accordingly, a state is democratic when, from the standpoint of the former, all its citizens are guaranteed an equal amount of civil liberty, or, as usually stated, are equal before the law; and, from the standpoint of the latter, when a large proportion of its citizens take some part in legally expressing the state's will.

[1] See Chapter IX.

A state in which all are equally exempt from certain interference, and all equally share in exercising such authority as exists, would be a perfect democracy. Such a condition is, in practice, impossible. The actual political authority exerted by the mass of citizens is determined by :

1. *The extent of the electorate.* That is, the proportion of the entire citizen body that are "active citizens," or the number that may, at any time or in any way, legally exercise governing authority.

2. *The control exercised by the electorate over the other organs of government.* If the electorate exercises only small powers, and at irregular or infrequent intervals, real authority is in the hands of the ordinary government, and the extent of the electorate is only an apparent test of democracy. Only when its control over the entire government is extensive and constant is the electorate an important governmental factor.

Hence, in a pure democracy, the electorate would coincide with the entire citizen body and would directly exercise all governmental authority. But no state finds it expedient to widen its electorate beyond a fractional part of its entire population, and in no modern state could even this narrowed electorate exercise all governing powers. The degree of democracy will depend, then, upon the limitations placed by a state on its electorate, and upon the relations existing between the electorate and the ordinary organs of government. Besides, since unanimous consent among a large number of persons is unlikely, and some form of majority must prevail, the question of dealing with the minority remains, all states having found it expedient to devise means of protecting this body and of giving it a legal method of expressing its will. Accordingly, the limitations placed by states upon their electorates; the authority exercised by electorates indirectly, by means of their control over the ordinary organs of government; the degree in which the electorate exercises authority directly, without the intermediate use of other governmental organs; and the method of representing and protecting the minority, — will form the subdivisions of this chapter.

91. Extent of the electorate. The widening of the electorate is one of the most characteristic features of recent political

development. States have always made a distinction between citizens and noncitizens, based mainly in ancient times on common blood, in the Middle Ages on personal allegiance, and more recently on territorial sovereignty. Within this citizen class, all of whom owe allegiance to the state and may claim its protection, a further division has been made into those who have not, and those who have, the right to share in expressing the state's will. This latter class has always been limited to a comparatively small part of the total citizen body. In the city states of Greece and in the Roman republic a fair proportion of the population had, under certain restrictions, a share in governmental authority. However, Rome's expansion and the establishment of the Empire destroyed this development, and it was not until the formation of a national state in England that the people again took part in government. There, according to Anglo-Saxon customs, the local units were practically independent; the freemen or warriors managed their own affairs, and in each township chose a reeve and four men to represent them at the general meeting of the shire. With the coming of feudalism into England, basing authority on the ownership of land, the right to vote was limited to landholders; and, after the decline of feudalism, this survived in a considerable property qualification. Religious disputes following the Reformation added religious qualifications.

The doctrines of natural rights, equality of man, and popular sovereignty, which were prevalent in the philosophic theories of the eighteenth century, manifested themselves in a demand for universal manhood suffrage, and in the French Revolution these doctrines were put into practice. In the United States, where English political methods had been established without the background of feudal institutions, a comparatively extensive suffrage was further widened as a result of the same general theories. Even in England the practical injustice resulting from the restricted and unevenly distributed franchise led to the Reform Acts of 1832 and following years. Other important states, affected by the general democratic tendency of the last century, have established a more or less extended electorate, and agitation for a wider and more equal suffrage still exists.

At present electorates include a fractional part of the population, reaching as high as three fifths in the more liberal states; and in several states, such as New Zealand, where adult suffrage is permitted, almost one half the population are voters. Remaining limitations, some being survivals of earlier restrictions, others being the result of political expediency, may be summarized as follows:

1. *Age.* All states agree that certain maturity is a requisite to the political judgment needed in voting. Hence a minimum age limit to the exercise of suffrage is universal. The United States, France, and England exclude persons under twenty-one years of age (England requires thirty years for women); Germany and Switzerland consider twenty years sufficient. This qualification alone removes from the electorate almost half the entire population.

2. *Sex.* Political authority in its origin was closely connected with military power. In Greece and Rome, and among the Teutons, the freemen in arms formed the earliest electorate. When modern states arose, women were legally and economically dependent; and, while in some states, through descent, women might occupy the throne, the idea that women as a class should share with men in government did not exist. In fact, except for the philosophical theory of "universal suffrage," held by a small minority of extreme radicals at the time of the French Revolution, it was not until the latter half of the nineteenth century that woman suffrage was seriously urged. Even to-day, in most states, it has made little progress. In New Zealand and Australia women are granted full suffrage; in the United States a number of commonwealths granted equal suffrage rights to women and men, and a number of commonwealths allowed women to vote in local elections, particularly on questions concerning the public schools. By the Nineteenth Amendment to the federal constitution, ratified in 1920, full suffrage rights were extended to women. England, in 1918, granted suffrage to women, retaining, however, certain limitations as to property and requiring greater age for women than for men. The recent German constitution confers full suffrage rights on women. Italy for a number of years has allowed widows owning property to vote in national elections. Without entering

into the merits of the arguments for and against woman suffrage, one may note that the movement has gained ground, chiefly in newer communities where women are outnumbered by men. At the same time experience shows that the number of women exercising such suffrage rights as they now possess is comparatively small.

3. *Citizenship*. At the present time, when movement of population from state to state is common, citizenship becomes an important and complicated problem. Most states require either original or naturalized citizenship as a qualification for suffrage. Several United States commonwealths allow aliens to vote after having declared their intention to become citizens. An allied requisite is residence. In the United States, where population is especially mobile, a certain period of residence, ranging from thirty days in some election districts to two years in some commonwealths, is demanded; and a person may legally vote only in the district containing his residence. In England a man possessing certain property qualifications may vote in one district in addition to that in which he resides. Some form of registration to prevent fraud in voting is in practice in all states.

Peculiar conditions of citizenship and suffrage exist in the United States. Naturalization is not open to Mongolians or to members of Indian tribes living on the reservations, and three commonwealths [1] exclude Mongolians from the electorate, even when natural-born citizens. In spite of the Fifteenth Amendment negro suffrage is practically prevented in most of the southern commonwealths by the nature and administration of their suffrage laws.

4. *Property*. Since modern suffrage originated during the feudal period, its exercise was for a long time limited to property holders. An early English statute required a freehold worth forty shillings a year as a requisite for voting, and for centuries the possession of real estate or the payment of taxes was necessary. According to the current theory, voting was the accompanying right of property, not of citizenship, since property owners alone had a permanent share and interest in the community. While this theory, formerly universal, has largely disappeared, certain of its elements survive. A small poll tax remains as a qualification

[1] California, Oregon, Nevada.

in several United States commonwealths; in England certain restrictions as to the value of premises owned, leased, or occupied still remain; and in Prussia the proportionate power exercised by voters depends upon the taxes they pay. While paupers dependent on the state are usually excluded from the electorate, property qualifications in general are being abolished.

5. *Mental and moral qualifications.* Religious qualifications for voting have practically disappeared, although the constitutions of several United States commonwealths provide that no person shall vote who does not believe in a God. Criminals in confinement, idiots, and lunatics are invariably excluded, and frequently those who have been convicted of crime are temporarily or permanently disqualified. Recently, educational tests, requiring ability to read and write, have been adopted. In some of the United States commonwealths this is a genuine requirement; in others it is administered chiefly to disfranchise the negro.

In addition there are, in certain states, exceptional qualifications. For example, in England, according to ancient unrepealed laws, graduates of the universities or liverymen in the London city companies are qualified voters, while certain clergymen, sheriffs, and other officials are disqualified as parliamentary electors. In many states citizens on actual military duty lose their votes. Besides, the full strength of the electorate is never actually exercised, sickness, absence from home, and deliberate or thoughtless failure to vote reducing the total. Usually about seventy-five or eighty per cent of the possible votes are cast, but in local elections or in referendums in which there is little general interest the exercise of the suffrage falls much lower.

Qualifications for suffrage are sometimes applied to the entire population of the state by a single law, as in the constitution of the German republic,[1] or in the law of July 7, 1874, in France. In England the suffrage has been established by a series of laws, each of which extended and partially repealed previous statutes. Of these the Reform Acts of 1832 and 1867 and the Representation of the People Act of 1884 were the most important. In the United States, except for the Fifteenth Amendment, providing

[1] Article XXII.

that the right of citizens to vote shall not be denied on account of "race, color, or previous condition of servitude," and the Nineteenth Amendment, extending full and equal suffrage rights to women, qualifications of suffrage are left to the separate commonwealths, the Constitution[1] providing that for federal suffrage the voters "in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

92. Control of electorate over government. Having, by various qualifications, established the electorate within their entire citizen body, modern states further differ in the degree of authority that this electorate exercises in government. In states whose constitutions may be modified only by popular consent, the electorate often exercises a negative control in excluding the ordinary government from a certain sphere of action. Long before men dreamed of sharing in government they were interested in limiting the scope of its activities. The real authority of the electorate will be determined largely by the method in which the ordinary officials of government are chosen, and by the control which the electorate exerts over them, either in influencing or in checking their action. Even in ancient times the concept of popular sovereignty was grasped, but it was put into practice only in direct assemblies of the entire electorate. The Greek Ecclesia was a confused mass of citizens in which every one had the right to speak, and the majority controlled. In more conservative Rome the popular assembly was divided into classes and was directed by the magistrates.

As soon as the area and population of a state exceed a comparatively small limit, it becomes increasingly difficult for all citizens to exercise direct political power. Popular assemblies either are attended by only a minority of those qualified, or become too unwieldy for actual usefulness, incapable of serious deliberation or of dealing with complicated problems. Modern democracies have met this difficulty by selecting smaller groups, representative of the whole, to create law, and by choosing officials to administer it. Representation and election are thus two means by which the electorate keeps in touch with the other organs of government. These bonds are further strengthened by the principle of local

[1] Article I, section 2.

self-government, according to which certain affairs are left in the hands of smaller units, allowing, in those areas, a more intimate connection between electorate and government than would be possible in the state as a whole.

The control of the electorate over lawmaking representatives is narrowed in many states by the fact that heredity, appointment, and indirect election remove part of the legislatures from their influence. Besides, in most lawmaking bodies, representatives once chosen are permitted to exercise their own judgment on questions at issue, and are under no legal compulsion to express the wishes of their constituents. Of course, in all elective offices the length of term affects the power of the electorate. Frequent elections allow opportunity to indicate approval or disapproval of a certain line of policy, and desire for reëlection leads many representatives to follow the wishes of those on whom that reëlection depends. A peculiar authority of the electorate over elected officials has recently been tried in several American cities. By the "recall" a certain number of voters, by petition, may demand a popular vote as to whether or not a certain elected official shall remain in office. In this way the electorate may remove, as well as choose, its representatives.

In addition to the pressure of public opinion, which, by means of public meetings, petitions, and the press, may be brought to bear on governmental officials, the electorate in modern states exerts a powerful influence by means of political parties. These voluntary associations of voters, aiming to control all the organs of government, and establishing behind the government a machinery of nominations, conventions, and committees, determine the real policy of the state, and give to the electorate a most effective way of making the government constantly and promptly responsive to its will. On the other hand, if party machinery falls under the control of a few men, the electorate finds itself less powerful than ever, for the legal irresponsibility of party "bosses" makes them correspondingly difficult to attack or remove. As political parties become a legal part of the government and are made responsible to the wishes of the electorate, the authority of the latter over government will correspondingly increase.

93. Initiative and referendum. In addition to the influence indirectly exercised by the electorate in its control over the ordinary government, a direct share in governing has been retained by the electorate in some states and established in others. Not only does the electorate, by means of jury service, exercise direct judicial powers in many states, but it also takes more or less part in the actual creation of law. Direct legislation has survived in Switzerland, partly because of the small size of the units, partly because of the influence of Rousseau, who taught that direct democracy alone embodied true popular sovereignty. In several other states direct legislation has been adopted in an effort to extend democracy and to remedy some of the evils of representative bodies. Modern methods of transportation and communication have removed many of those hindrances to direct democracy, in large areas, that necessitated representation; and government by the mass of the people, at least in a limited degree, is again possible. This takes the form of:

1. The initiative, by which a given number of voters may, on petition, require the legislature to pass a statute of a designated kind and submit it to popular vote. In the "formulative initiative" a certain number of voters may actually draw up a bill in detail and demand a vote upon it.

2. The referendum, in which a proposed law or constitutional amendment is submitted to popular vote and becomes law if ratified by the required majority. This may be "compulsory" for all or for certain kinds of laws; or may be "optional," if called for by a certain number of voters.

3. The plebiscite, in which a certain question is submitted to popular vote, the decision, while having no binding force, being intended as a guide to the policy of the government.

While constitutions were first adopted by popular vote in the United States and France, direct legislation by the electorate has been most highly developed in Switzerland. Four of the twenty-two cantons forming the Swiss federation retain the ancient folk-moot, or *Landesgemeinde*, in which all the voters meet, pass laws, vote taxes, and elect officials. In practice, however, these bodies are becoming so large that debate is impossible, and business is

prepared beforehand by the cantonal council, and accepted or rejected by the people without amendment. In the federal government the referendum is compulsory for all constitutional amendments; and optional, at the request of thirty thousand citizens or the legislatures of eight cantons, for laws of general application. Fifty thousand citizens may demand either a specific or a general revision of the federal constitution, but there is no federal initiative for ordinary laws, unless they be put in the form of constitutional amendment. In all the cantons there are compulsory referendums for constitutional changes; and in all except conservative Freiburg and those having the *Landesgemeinde*, the referendum for ordinary laws of a general nature is either compulsory or optional, the number of voters required to demand a referendum in the latter case depending upon the population of the canton. The initiative may be used for constitutional revision in all but one of the cantons, and in all but three, to enact or revise ordinary legislation. In actual practice the referendum is used much more than the initiative, and a large proportion of proposed laws are rejected.

In the United States the electorate exercises direct legislation in the New England "town meetings," where the voters, in mass meeting, elect township officials and decide questions of local concern. Almost from the beginning of our national history popular votes have been taken on the adoption or amendment of constitutions. No national referendum exists in the United States, but in the commonwealths a number of questions are referred to popular vote. These take the form mainly of special statutes, affecting only certain localities, such as city charters; or of general statutes, applying to local governments, such as local indebtedness or local option in liquor selling. The constitutions of some commonwealths demand that certain laws, such as those regarding a change in the location of the capital or an increase in the state debt, be submitted to popular vote; and statutes of general scope have been voluntarily submitted to the people, as in the case of the location of public buildings or the extension of suffrage to women. In cities referendum on many questions of importance is becoming common. The initiative is also in use in several commonwealths and in a number of local areas, although in most cases petition

to legislatures is the method relied upon to accomplish the same purpose.

Among the advantages of direct legislation may be noted :

1. The people may force action upon apathetic legislatures, or may prevent legislation that does not reflect the wishes of the community.

2. The people are less likely than the legislature to be improperly influenced or to hesitate in opposing certain special interests.

3. Public sentiment is awakened and interest in government stimulated if voters have questions of importance to consider.

4. The local referendum may adapt general laws to the needs of particular localities.

Among the disadvantages are :

1. Voters take little interest in such elections. Because of their frequency and because a large proportion of citizens are not interested in many questions submitted, the number of votes cast is usually small.

2. The referendum destroys the sense of responsibility of legislatures and executives. Unwise laws are passed in the expectation that popular vote will destroy them, and the advantages of having laws framed by a group of men specially selected and trained is largely lost.

3. It is almost impossible to frame complicated statutes concerning economic or social questions in such a way that a simple yes or no vote will indicate the real will of the people.

Present indications point to further extension of direct legislation in the United States. The idea that constitutional changes must be submitted to popular vote is deeply fixed in political thought, and the detailed provisions embodied in recently adopted commonwealth constitutions show a growing distrust of legislatures. At the same time, in local units, particularly in cities, there is a general demand that all questions of importance, especially those concerning the expenditure of money, shall be submitted to popular vote. Democracy is thus being extended by greater control on the part of the electorate over government, by a growing amount of direct legislation, and by increased responsibility

and legality of political parties, hitherto the chief bond between people and government.

The preceding discussion of the powers, direct and indirect, exercised by the electorate in modern democratic states may be summed up as follows:[1] The electorate has become practically a fourth department of government. Standing back of the ordinary executive, legislative, and judicial organs, it exercises political powers, varying in different states, but tending to become more extensive as intelligence and political ability increase. It exercises executive powers in electing officers of administration, lawmaking representatives, and judges; it shares in legislation through the initiative and referendum; it takes part in judicial decisions by means of jury service. In some states it has a deciding voice in the formulation of the constitution, thus determining the fundamental organization of the state. At the same time restrictions on the extent of the electorate, once numerous, are being removed, this process making it coincide more and more with the politically capable population of the state.

94. Minority representation. In a direct democracy it is conceivable that the wishes of a minority, consisting of almost half the entire electorate, might be completely disregarded. To prevent this possible tyranny of the majority, a number of devices are in use, granting to minorities more or less share in authority.

The systems of federal government and of local self-government are favorable to minorities, in that they allow local communities to adjust government to their own needs, and avoid the possible oppression that uniform legislation might mean. Besides, in dividing a state into districts and subdistricts, with officials and representatives chosen separately by each, the chance that a minority will control some places is much greater than would be the case if all officials were chosen on a "general ticket." In all states national legislatures are elected by districts, and within these areas smaller districts usually serve as the bases for the selection of local officials. By the process known as "gerrymandering" the authority having the right to redistribute these districts often arranges them in such a way as to make it difficult for the minority to control any

[1] Dealey, The Development of the State, pp. 217–218.

of them ; or, by combining the minority voters in a few districts, give them fewer representatives than their strength really deserves. Because of unequal growth of population frequent changes in the distribution of districts is necessary, if, as is usually the case, population is the basis of representation.

Within the districts, even when honestly and equally established, there are always minorities whose votes, cast for defeated candidates, are lost ; and various schemes of minority representation have been proposed, and in some cases put into practice. Sometimes it is provided by law that certain boards or commissions shall contain members of both political parties, thus guaranteeing minority representation. In districts where more than one candidate is to be elected, the plan of " limited voting," by which each voter is allowed fewer votes than there are places to be filled, results, unless the majority party is strong enough to divide its votes and still win, in the election of some minority members. From 1867 to 1885 this plan was tried in England, voters in places sending more than two members to Parliament being each allowed one vote less than the number of members to be chosen. In " cumulative voting" each voter has as many votes as there are candidates to be elected, and may distribute them as he likes. In this way a minority, if it concentrates its votes on one candidate, has a good chance to secure his election. This method is in use in Illinois, where three members are chosen to the legislature from each district, and results in giving the minority about one third of the members. In " proportional representation" an attempt is made to represent the surplus votes that successful candidates often receive. From the candidate having the highest number of votes all above the majority necessary for election are taken away and added to the candidate indicated by the voters as their second choice, and so on until the proper number are elected. Until the entire vote is calculated it is, of course, impossible to tell who is elected.

In Prussia a form of minority representation aiming to guard the interests of the upper classes was formerly in use. Voters were divided into three classes, not numerically, but according to wealth, each representing one third of the taxable property of the district ;

and each class elected one third of the representatives or officials to which the district was entitled. A comparatively small number of wealthy men composed the first class; a considerable number of well-to-do, the second; and the great majority of citizens, the third. Hence a very small number elected one third of the officials, and a minority usually controlled two thirds. In Berlin the first class contained "less than two per cent of the voters, the second class less than thirteen per cent, and the third eighty-six per cent."[1] Naturally the lowest class was discontented and largely refrained from voting. In Belgium a somewhat similar system was in use until 1913, citizens having certain qualifications as to age, property, education, etc. being given either one or two supplementary votes.

In England and America plurality is usually sufficient for election. Since in both these countries there are only two strong parties, hence usually two leading candidates, this convenient method works little hardship, although the successful candidate often receives little more than one third of the total vote. In Europe, where party groups are numerous, absolute majority is often required. In France, if, on the first ballot, no one receives a majority, another vote is taken two weeks later, and at this a plurality is sufficient to elect. As a result numerous groups show their strength on the first ballot, hoping to win concessions from the leading candidates on the second. In Germany, if no candidate receives a majority, a new election within two weeks decides between the two candidates that received the highest number of votes at the first election, the lot deciding in case of a tie.

The peculiar arithmetical system by which presidential electors are distributed in the United States, each commonwealth being entitled to as many as it has senators and representatives in Congress, thus giving an advantage to the small commonwealths because of equal representation in the Senate; and the custom of voting for presidential electors on a general ticket, so that, no matter how small the majority, the entire vote of a commonwealth is cast for one candidate, — make it possible for a president to be elected who receives a minority of the total popular vote. This has actually happened several times.

[1] Quoted in Wilson, The State, p. 295.

A modified form of minority representation is found in the attempt, formerly common, to represent separately the important classes, professions, or interests within the state. In the Middle Ages the three estates — clergy, nobility, and commons — received distinct representation, and the constitution of upper houses in some European states still shows survivals of class divisions. Landowners, churchmen, large taxpayers, representatives of army and navy, and men distinguished in science or art are found in upper houses, and are chosen for the purpose of representing interests or classes rather than population or territorial divisions. In the United States the legal profession has wielded an influence in politics out of all proportion to its numerical strength.

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CHAPTER XVII

SEPARATION AND DIVISION OF POWERS

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95. The ordinary government. In its broadest sense the government of a state includes the entire electorate in so far as it chooses representatives and officials or exercises direct legislation through initiative, referendum, or plebiscite. It also includes special conventions when legally assembled for constitution-amending or other purposes; and, in actual practice, though largely unrecognized by law, political parties, with their caucuses, committees, and conventions, form important factors in government. However, all of these are infrequent or irregular in their action, and may be distinguished from the ordinary organs of government that are constantly in existence and that wield by far the greater part of state authority.

These organs, whose structure and powers are outlined in the constitution of the state, express and put into execution the state's will. Because of the extent of modern states in area and population,

and because of the wide range of interests with which their governments must deal, a large number of persons are included in government, and considerable distribution of power is necessary. The bases of classification that best serve as a framework for a discussion of existing governments are:

1. *The separation of powers.* According to the nature of their functions, organs of government are usually classified as legislative, executive, and judicial. Legislatures are concerned in the making of law; executive officials, in the carrying out of law; and the judiciary, in deciding as to the application of law to particular cases. While in theory these functions seem quite separate, in actual practice no clear-cut distinctions are possible. Executive officials must exercise wide discretionary powers in administering law, and must deal with questions concerning which no law exists; judges in their decisions often create new law as well as administer existing law. At the same time states differ widely in their attempts to separate these departments or to subordinate one to another, fundamental differences in organization resulting from their adjustment.

2. *The division of powers.* According to the area over which organs of government have jurisdiction, or according to the nature of the questions with which they deal, a division into central and local government is made; and in the latter, several degrees of subdivision, such as colonial, commonwealth, district, rural, and city units, are found. Thus, in addition to a separation of government into legislative, executive, and judicial departments, a cross classification of these into central and various local organs is universal. The relation that local governments bear to the central organization; and the adjustment of legislative, executive, and judicial organs within each division and among the divisions, become important questions. For purposes of comparison a survey of existing governments, classified on the basis of their separation and division of powers, will be undertaken in succeeding chapters. It must be remembered, however, that the government of each state is ultimately a unit, the sum of all the organs included in its departments and divisions forming the legal organization of the state and exercising its sovereignty.

96. Theory of the separation of powers. The theory of the separation of powers may be briefly stated as follows. The functions of government are legislative, executive, and judicial. These functions should be performed by different bodies of persons; each department should be limited to its own sphere of action, and within that sphere should be independent and supreme. These principles were the logical outcome of the historic process by which government developed. At first all political power was concentrated in the person of the chief or king, who was responsible to no one for his actions, and who was limited by no legal restraint. The evolution of the state was accompanied by extensive differentiation in government and by increasing political consciousness of the people, with corresponding participation on their part in government. In this process the authority of the monarch was distributed among various officials, and the people, at first aiming to limit governing power, finally controlled it. Accordingly it was natural that the winning of democracy should be accompanied by the belief that concentration of authority meant tyranny, and that only under a distribution of powers, safeguarded by checks and balances, was individual liberty possible.

It is not surprising, then, that some form of the separation-of-powers theory usually accompanied democratic development. Based on his observations of Greek city states, Aristotle, referring to the departments of government, said,[1] "the first of these is the public assembly; the second, the officers of the state . . . ; the third, the judicial department." In the writings of Polybius,[2] based on his study of the Roman republic, the excellence of its organization was attributed to the system of constitutional checks and balances provided. In the Byzantine Empire an extensive distinction was also made between military and civil organs of government, and this separation has been accepted in modern states. The establishment of the Roman Empire, the aristocratic government of feudalism, and the rise of national states under absolute monarchs, again concentrating authority, crushed these principles; and it was not until, as absolute monarchies declined, popular sovereignty demanded some constructive theory for its support that

[1] Politics, Bk. IV, chap. xiv. [2] History of Rome, Bk. VI.

the modern doctrine of the separation of powers took shape. Bodin urged that the prince should not administer justice in person, especially when deciding crimes against himself, and rulers began to leave to independent tribunals the ordinary administration of justice. Locke and Montesquieu noted the differentiation of governing authority, and the latter,[1] basing his reasoning upon what he considered to be the form of English government, distinguished three powers — legislative, executive, and judicial — and urged the importance of intrusting each to a distinct and independent authority.

While the separation of departments which Montesquieu extolled did not actually exist in England and became even less distinct as time went on, and while differentiation of powers in continental states took a still different form, the general principles of the theory were adopted in the political thought of the day. They were incorporated into the written constitutions then being formed and have become political axioms. Blackstone, in his "Commentaries" (1765), states that the union of the powers of making and enforcing laws in the same man or body of men destroys liberty. In France the Constituent Assembly (1789) declared [2] that a country in which the separation of powers is not determined does not have a constitution. In the United States, where, in colonial times, a long contest between governor and assembly had emphasized the hostility of executive and legislature, the doctrine of separation of departments and of numerous checks and balances was especially welcome. In all states, depending upon their historic development, their existing conditions, and their imitation of other states, a separation of departments, more or less complete, is found.

97. Separation of powers in modern states. The doctrine that individual liberty can be secured only through an extensive system of checks and balances was an article of political faith in the eighteenth century, and was carried to its greatest extremes in the federal and commonwealth constitutions of the United States. More recently this theory has lost much of its former credit,

[1] Esprit des Lois, Bk. XI, chap. vi.

[2] Déclaration des droits de l'homme et du citoyen, Art. 16.

though it still lies at the basis of many political organizations. While subject to numerous exceptions, differing in different states, the policy of confining organs of government in general to the exercise of those powers assigned to them by this theory has been proved wise by experience.

In modern states the position of the judiciary is probably most distinct and independent. Their tenure is usually sufficiently permanent to remove them from the control of the body that selects them, whether it be electorate, legislature, or executive. Their functions are carefully limited and protected, and particular effort is made to keep them free from bias or extraneous influence. At the same time this separation is not complete. Except in the United States, where the Supreme Court is established by the Constitution, courts may be created or destroyed by legislatures, and the influence, direct or indirect, of those who select the judges remains. Besides, in all states, legislatures and executive officials exercise functions that are judicial in nature, and the courts share in creating and executing law. Legislatures not only create the law that courts apply, but in deciding upon the qualifications of their members and in serving as courts of impeachment, as in France and the United States, or as final courts of appeal, as in England, they exercise powers properly judicial. The executive, in its power of pardon and in deciding many disputes arising in the course of administration, also shares in judicial authority. Courts perform executive functions in their right to repress interruption or prevent interference with their proceedings; and the lower courts in the United States and the justices of the peace in England are important administrative as well as judicial tribunals. Courts exercise legislative functions in issuing injunctions, in extending or restricting law by interpretation, and in applying equity or common law. In the United States, where courts may declare laws unconstitutional, the judiciary has practically a veto on legislation.

The doctrine of separation of powers, in so far as it concerns the control of the judiciary over executive officials, has had a different application in Europe from that obtaining in England and the United States. In these latter states, whose development has been

marked by long contests against executive power, and whose strong individualism has rebelled against extensive governmental authority, officers of government, acting in their official capacity, are subject to the jurisdiction of the ordinary courts almost to the same degree as private citizens ; and their individual acts, except when of a political or contractual nature, may in many cases be amended, interpreted, or prevented by the courts. On the continent, especially in France, a much wider scope is given to administrative officials ; and their acts are reviewed by special tribunals known as administrative courts, organized quite differently from the ordinary courts and not forming part of the regular judicial system. While claiming to rest on the principle of separation of powers, this executive independence actually results in considerable limitation on civil liberty, since arbitrary acts may be performed with impunity by executive officials, no way of bringing them to account before the ordinary courts of law being possible.

The most important application of the doctrine of separation of powers is in the relation existing between legislature and executive in modern states. As already indicated,[1] governments may be classified as parliamentary and nonparliamentary. In the former legislative and executive powers are not separated. The cabinet, as a committee of the legislature, directs the making of those laws which, as heads of the various administrative departments, it executes. It remains in office only as long as it is supported by a majority of the legislature, resigning when that support is lost. Hence the same body of men controls both legislation and administration, and the very opposite of separation of powers is the case. Even in Montesquieu's time this process of concentrating governing authority, though unrecognized by law, was well advanced in England, and has since been adopted in France, Italy, and the majority of European states. In actual operation the English legislature sets bounds to its control over executive functions, leaving the executive within its own field practically independent. In France the legislature exercises its powers more extensively, making the executive almost completely dependent. The only experience that the United States has had with parliamentary

[1] See section 80.

government was during the Confederation (1781–1789), when executive officers and courts were at the mercy of Congress.

In nonparliamentary governments the executive, in its origin and tenure, is independent of the legislature, and within a certain sphere exercises functions with which the legislature cannot interfere. Such is the general system in the United States, in Switzerland, and in the American republics. In no state, however, is the separation complete. The law that the executive carries out is, of course, created by the legislature, and control over the military forces gives to the executive, especially in time of war, large authority over the entire government. Besides, each department shares in functions belonging primarily to the other. The legislature, by its share in the appointing power, its right of impeachment, and its control over taxation and appropriations, exercises authority mainly administrative in nature. The executive, in its veto, its right to initiate legislation, either directly or by recommendation, and its power of issuing ordinances, independent of or supplementary to existing laws, shares in legislative authority. In the United States, treaties negotiated by the executive become valid only when ratified by a two-thirds majority in the Senate; and in the German republic, treaties concluded by the president require the consent of the National Assembly if they relate to subjects within national jurisdiction.

The general relation of the departments in the leading modern states may be summed up as follows:[1] In the United States the executive is almost entirely independent of the legislature, but is, in many cases, subject to the control of the courts. In France the executive is subject to the control of the legislature, but is almost entirely independent of the courts. In Germany the executive is largely dependent upon the legislature and may be impeached before the highest court. In England the executive is subject to the control of the legislature and, in many cases, also of the courts.

98. Criticism of separation of powers. The general doctrine of the separation of powers contains valuable political principles. In government, as in all highly developed organizations,

[1] Goodnow, Comparative Administrative Law, Vol. I, p. 37.

differentiation of function and division of labor are essential. Different requisites are demanded for different duties, and efficiency is secured by specialization. It is therefore desirable that legislative, executive, and judicial functions should in general be exercised by separate organs, and that within these further subdivisions be made. All states agree in giving to the judiciary a certain independence in tenure and in action, but no such consensus exists as to the proper relation of legislature and executive. English writers praise the harmony in government and the prompt response to public opinion secured by the cabinet system, while American writers emphasize the advantages of an independent executive. Their relative merits depend largely upon political traditions and existing conditions in each state.

In assuming that extensive separation of powers is essential to liberty, and that each department, limited to its own functions, should be independent of other organs within that sphere, the doctrine breaks down. That individual liberty is possible without separation of powers the present government of England sufficiently attests. In a democratic state concentration of authority in the hands of the organ most directly representing the people may secure greater liberty than divided powers granted to independent and irresponsible organs. In fact, a pure democracy presupposes complete concentration of all authority in the hands of the electorate, and checks and balances usually secure a considerable degree of minority control. Any attempt at complete separation of functions must fail. As the preceding section shows, each organ participates in the duties of the others, the same organ at different times exercising legislative, executive, and judicial powers. Beyond a certain degree separation of powers leads to troublesome deadlocks, and complete separation is impossible, not merely in practical application, but even in theory.

An examination of existing governments, taking into consideration their actual working and those institutions that have grown up outside the formal constitution of the state, shows their essential similarity. The government of each state is a unit, being in its entirety the legal organization of the state. Its functions are twofold. It must formulate the state's will and put that will into

execution. All governments, regardless of their form, are limited to these two functions, — the judiciary, instead of being a separate department, sharing sometimes in creating, sometimes in enforcing law. However distinct the functions of government may be, no such clear separation may be made among the organs exercising these functions. More or less differentiated organs develop, especially in democratic states, and secondary functions, delegated to somewhat independent organs, make government increasingly complex. For example, the will of the state concerning different matters may be expressed by : [1]

1. The constitution-making organ, which expresses the will of the state as to the form of governmental organization and the fundamental rights of the individual.

2. Legislatures, which express the will of the state in most cases where it has not been expressed in the constitution.

3. Executive authorities, either as a result of constitutional provision or of powers delegated by legislatures, in issuing ordinances express the will of the state concerning details not provided for by legislatures.

Similarly, the following authorities are engaged in the execution of state will :

1. Judicial authorities, which, in case of controversy, apply the law in concrete cases.

2. Executive authorities, which have general supervision over the execution of state will.

3. Administrative authorities, which are concerned with the scientific, technical, and commercial activities of the government.

If, then, the government of each state is a unit, engaged in expressing and executing the will of that state, a certain degree of harmony among the various organs, no matter how extensively differentiated, is essential. The legally expressed will must be put into effect. Obviously the formulation of law is both antecedent and superior to its execution, and all states, if their government is to be efficient, must provide some means of securing unity of action among the various organs, and of subordinating organs engaged in executing law to those that create it. The system of

[1] Goodnow, Politics and Administration, pp. 16, 17.

parliamentary government, in which executive is legally subordinated to legislature, has proved efficient in some states. In the United States, where separation of powers has been pushed to an extreme dangerous to the unity of governmental action, political parties have arisen, powerful in organization, binding together all the departments of government. In controlling the election of both those bodies that express and those that administer the state's will, and in determining general political policy, parties secure that harmony which successful government demands, and are receiving increasing legal recognition as a part of the formal governmental system.

There must, then, be harmony between the expression and the execution of the state's will ; [1] and in democratic states the organs that express this will, or make law, must have some control over the organs that execute such will or law. This control may be found either in the formal government or outside, in the political parties. If, however, such control is extended beyond the limit needed to secure orderly and harmonious government, administration becomes inefficient and expression of the real will of the state is made difficult. Within the general control exercised by legislature or political parties, sound policy demands a sphere of independent action for executive, and especially for judicial, officials. Such is the general theory of the separation of powers in present political thought.

99. Division of powers. States not only distinguish the functions of expressing and of executing their wills, but they also realize that certain interests are of general nature, affecting the entire state, and that others are of local concern, best dealt with by smaller units. Hence a division of the organs of government into central and local bodies is found. As previously indicated,[2] the fundamental classification of state organization on this basis is into unitary and federal governments. In unitary governments all the local units are creatures of the national government, and their existence and their powers may be modified or destroyed at its pleasure. In federations the component commonwealths are created and their powers outlined by the constitution of the state, and neither federal government nor commonwealth governments

[1] Goodnow, Politics and Administration, pp. 36–38. [2] See section 79.

may legally modify, destroy, or encroach upon the other. Within these commonwealths, however, are several degrees of local units, legally subordinate to their respective commonwealths, being created either by their constitutions or by their legislatures. Every state thus possesses a central or national government; federal states have commonwealth governments, dividing with the central government the fundamental authority of the state; and all states have a series of local governments exercising powers delegated to them by the superior government that creates them.

In spite of minor differences a general similarity in the functions exercised in modern states by the various governmental units may be noted. The central government invariably controls relations with other states and questions of general policy, — foreign affairs, war and peace, national finance, and internal affairs affecting general welfare lying within its proper scope. To the divisions of government are generally left the relations of the state to its citizens, and the dealings of man with man, especially in questions of detailed administration. The larger units regulate business, property, criminal law, education, and such matters, while the smallest units are concerned with public order, local transportation, streets, water, lighting, and similar interests.

The relations existing between central and local government open up some of the most important problems in political science. The principle of local self-government, upon which modern democracies are based, requires that local units be granted a fair degree of independence. At the same time, to maintain that unity necessary for efficient government, a certain control must be exercised by the central government over all local units, especially since, besides being local communities dealing with questions of local concern, they are administrative districts of the larger units and act as their agents. To combine local independence and central control two general methods have been developed.[1] The central government may control legislation, leaving administration largely in the hands of local officials; or the central government may delegate considerable legislative authority to local governments, while retaining a direct supervision over administration.

[1] Goodnow, Politics and Administration, chap. iii.

The former system, that of legislative centralization and administrative decentralization, is characteristic of England and the United States. Detailed laws are passed by the central legislatures and little scope is left for the expression of local will. At the same time, administration, both of local affairs and of those things in which the local unit acts as an agent for the state, is in the hands of local officials over whom the central government exercises little control. This system is in keeping with the English and American idea of legislative supremacy, but results not only in constant state interference in local affairs, but also in nonenforcement of state laws in communities where those laws are unpopular, since enforcement is at the mercy of local officials.

The system of legislative decentralization and administrative centralization prevails in France and Germany. Local communities enjoy greater freedom in expressing the local will, central legislatures granting wide powers in general terms. On the other hand, local officials are seldom made agents for the execution of state laws ; and even in carrying out distinctly local policies, centrally appointed officials have large powers, often practically nullifying the will of the local community. This system is in accordance with the continental idea of subordinating the legislature and of granting wide discretionary powers to administrative officials.

Both of these systems have obvious defects. Administrative decentralization sacrifices the interests of the state in making difficult the execution of state will in case of conflict between state and local community. Legislative decentralization sacrifices the interests of the local community in making insufficient provision for the execution by local agents of the local will. Accordingly a strong tendency toward compromise is evident. England and the United States are centralizing their administrative systems and are granting larger powers of self-government to local units. In the United States special legislation relative to localities has been forbidden, and a growing belief is manifest that local units should be protected by commonwealth constitutions against the commonwealth legislatures. Especially in cities, the recent tendency to form party lines on municipal issues is breaking down the centralizing influence of the national political parties. On the continent

efforts are being made to undo the highly centralized administration by creating local corporations with power to choose their own officials. The fact that, on the continent, parties are less strong and interfere less in local politics makes a successful solution of this question less difficult.

In general, states whose administration is centralized are more or less *bureaucratic*.[1] That is, their governments are composed of specially trained officials who give their entire time to public service, whose tenure is fairly permanent, and whose interests are different from those of the mass of the population. In such states government service is a profession, with its own discipline and solidarity, and the official class is responsible to superior officers of the same class rather than to public opinion. Rome under the Empire, Prussia in the eighteenth century, and France under Napoleon were good examples of bureaucratic organization, while Germany and Japan in the modern world show the strongest evidences of the same organization and spirit.

This centralized system has the merits of efficiency and economy, its public officials usually being able, well-trained, and experienced. The chief dangers lie in its emphasis on form and routine and its disregard of public opinion. Hence the ordinary citizens receive little political education, and cannot be expected to take a patriotic and loyal interest in affairs concerning which they are ignorant and over which they exercise little authority.

On the other hand, decentralized administration is usually more responsive to popular will. Its officials are drawn at intervals from the rank and file of the population, serve often without pay, and at the expiration of their short terms of service return to private life. No official class, distinct from the remainder of the population, is formed; and governing officials, constantly influenced by public opinion, are subject to the control of popularly chosen representative bodies rather than to that of superior administrative officers. This system, while sacrificing efficiency and economy, secures political education and widespread interest in public affairs.

Along the line of this distinction between bureaucratic and popular administration, which in the last analysis is mainly one of

[1] Garner, Introduction to Political Science, pp. 197–200.

spirit and not of form, present tendencies also point toward a compromise. Modern states aim to combine the practical skill of a specially trained, permanent administrative service with the political intelligence and stability that result from self-government and popular control. The creation of law in accordance with intelligent public opinion and the administration of law by specially trained officials seem to be the proper adjustment.

OUTLINE OF CHAPTER XVIII

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STRUCTURE OF LEGISLATURES

1. NUMBERS
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    a. Advantages and disadvantages

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FUNCTIONS OF LEGISLATURES

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2. CONTROL FINANCE
3. INFLUENCE INTERNATIONAL DEALINGS
4. EXERCISE CERTAIN JUDICIAL AND ADMINISTRATIVE POWERS

CHAPTER XVIII

THE LEGISLATURE

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100. Structure of legislatures. The gradual process by which deliberate creation of law became a political function, and the transfer of this power from autocratic rulers, supported by groups of nobility and clergy, to representative bodies including all classes, has already been indicated.[1] A survey of these legislative bodies in modern states now demands consideration.

Lawmaking organs are concerned with deliberation and discussion, with the balancing of policies and the compromising of conflicting motives. It is therefore essential that they include a large number of persons, represent all important sections, interests, and classes, and derive their authority ultimately from the mass of the people. Since the gain in breadth of view, resulting from large numbers, is offset by increasing unwieldiness, as size

[1] See sections 34, 57, 59.

increases, some compromise as to numbers must be made. Modern states find bodies consisting of several hundred men the most satisfactory adjustment.

In addition to their large size, modern legislative bodies secure further deliberation and caution by a separation into two houses, forming what is called a *bicameral* legislature. This system originated rather accidentally in England. To the usual council of higher nobility and clergy, forming the advisers of the king, delegates from the shires and boroughs, representing the lesser nobility and the common people, were added. Since the lesser clergy, meeting separately in their convocation, were not included in this body, a natural grouping of the great nobles and clergy into one House, and of the lesser nobles and burgesses into another, took place. As England became increasingly industrial and commercial, the king was compelled to rely more and more on the support of this latter body for financial aid, and, its authority correspondingly increasing, transferred the balance of power, during the sixteenth and seventeenth centuries, from the Lords to the Commons.

Because of this historic development, — the British upper house being an aristocratic institution, — the idea prevailed, about the beginning of the nineteenth century, that popular sovereignty demanded a single House, responsible directly to the people. The United States under the Confederation tried the experiment of a single House, and a similar plan was deliberately adopted by the Constituent Assembly in France (1791) and again in the second French Republic (1848). The unsuccessful German parliament of 1848 consisted of a single House; several American commonwealths [1] have tried this method, and it still survives in the kingdom of Greece and in the Central American republics.

At present all the important states have a legislative body of two chambers. In some cases, as in the United States and Germany, it is the historic result of a compromise between confederate and national interests; in most European states it is a compromise between the former authority of the nobility and the growing demand for popular government; in other states, as in France, the

[1] Georgia, Pennsylvania (1790), Vermont (1836).

South American republics, and Japan, it has been deliberately adopted because of its advantages. These may be stated as follows:

1. It secures deliberation and caution and gives better balance and more carefully analyzed and digested legislation. A single House is in danger of being rash and one-sided, swayed by emotion or passion, satisfied with incomplete and hasty generalizations. Between two houses there is likely to be healthy rivalry, causing each to subject the measures of the other to careful scrutiny, and resulting in more careful analysis of principles than would be the case if the contest were between a majority and a minority in a single House only.

2. It makes possible a more correct interpretation of general will. A single House, especially if all its members are elected at one time, is in danger of growing out of sympathy with popular opinion before its term expires. Two houses, chosen at different times or for different terms, may remedy this defect, at the same time securing that balance of conservatism and radicalism that results in real progress.

3. It maintains the independence of the executive. In modern democracies a single House, feeling that it represented popular will, would tend to subject the executive to its control, thus destroying that separation between legislation and administration that good government demands. Two houses, checking each other, give greater freedom to the executive, and in the long run secure the best interests of both departments.

Against these advantages it may be urged that the bicameral system is a transitional stage in political development; and that, as ideas of confederacy and class spirit are replaced by national democracy, a single organ, composed and proceeding in such a way as to represent the real wishes of the people, would be the logical law-making body. For effective representation, harmonious coöperation, timely concession, and apt adjustment, "a common discussion in one broadly representative Chamber must surpass in value any series of discussions conducted first by persons having exclusively one order of interests and afterwards by those having exclusively another order." [1]

[1] Amos, The Science of Politics, p. 245.

101. Composition of upper houses. The upper houses of modern states exhibit considerable diversity in structure and usually contain important survivals of past historic development. In the qualifications and methods of choice of their members they often show traces of the class control that preceded modern democracy; and in the basis of their representation, especially in federations, they indicate the historic units by whose combination the state was formed. As distinguished from the lower houses, which are usually chosen directly and are representative of the people according to numbers, the upper houses are chosen indirectly, and in many cases represent the local governmental organizations.

The composition of upper houses is based on the principles of heredity, appointment, election, or a combination of these. In England, Prussia, Japan, Hungary, Spain, and Italy a greater or less proportion of the members hold their office by hereditary right. In several of these states a small number of church officials also hold seats by virtue of their office. Appointment is used to a considerable degree on the continent, is ordinarily controlled by the executive, and the offices thus filled are held for a life term. Election, either direct or indirect, is used in the United States, the other American republics, and in France, Belgium, and the commonwealth of Australia. To avoid making the upper house, when elective, a duplication of the lower, several methods are in use. Sometimes a different basis of representation is taken; indirect election is the usual method of choice, and, by a difference in the length of terms or by partial renewal, additional variation is secured.

The composition of the upper houses in several important states may be viewed more specifically.

1. *England.* The English House of Lords consists (1914) of six hundred and thirty members. These include two archbishops and twenty-four bishops of the established church, holding seats by virtue of their ecclesiastical office. Sixteen are Scotch peers, elected by the whole body of Scotch peers from their own number, holding office only during the existence of the Parliament for which they are chosen. Twenty-eight are Irish peers, chosen for life by the entire body of Irish peers. Four are eminent jurists,

appointed for life by the crown to supply legal knowledge when the House sits as a court. The remainder are English peers, whose seats are hereditary. Additional members may be appointed by the crown, their seats also becoming hereditary. Members of the House of Lords must be male British subjects twenty-one years of age.

2. *France*. The French Senate consists of three hundred members. These are distributed among the departments into which France is divided, roughly in proportion to their population, the number chosen from each ranging from one to ten. In addition, the territory of Belfort, each of the three departments of Algeria, and several of the colonies are represented by one senator each. They are elected indirectly by bodies composed of (*a*) delegates chosen by the municipal council of each commune in proportion to its population, and of (*b*) the senators, deputies, councilors-general, and district councilors of the department. In 1875 the two chambers elected seventy-five senators for life, but the Senate Bill of 1884 provided that, as these seats became vacant, they should be filled by regular election, the department having the right to the vacant seat to be determined by lot. Senators are elected for nine years, changing by thirds, and the qualifications are French citizenship, the attainment of the fortieth year, and the possession of full civil and political rights.

3. *Germany*. The German *Reichsrat*, or Federal Council, consists of fifty-five members. These are distributed among the commonwealths composing the republic, Prussia having twenty-two, Bavaria seven, Saxony five, and so on. Like the former *Bundesrath*, this body represents the commonwealths rather than the people directly. The constitution provides that each commonwealth with a population of one million is entitled to one vote; each with a population of more than that number is entitled to a vote for each million people and an additional vote for any fraction thereof which equals the number of inhabitants of the least populous commonwealth. No commonwealth may have more than two fifths of all the votes. This is intended to keep the predominance of Prussia within bounds. Commonwealths must be represented in the *Reichsrat* by members of their cabinets.

4. *The United States.* The United States Senate consists (1914) of ninety-six members, two from each commonwealth. The Constitution provides that each commonwealth shall have equal representation in the Senate, and attempts to secure this survival of confederatism against ordinary process of amendment.[1] Under the Seventeenth Amendment to the Constitution, ratified in 1913, members are chosen by direct popular election. The term is six years, changing by thirds, and senators must be thirty years of age, citizens of the United States for nine years, and residents of the commonwealth from which they are chosen.

102. Composition of lower houses. In contrast to the diversity in method of choice and in basis of representation that is found in upper legislative chambers, modern states are in substantial harmony concerning the composition of their lower houses. These bodies, coming into power as the result of the democratic development of the past century, contain few historic remnants, and show practical agreement on the following points:

1. Their source is derived from a suffrage nearly universal. Subject to certain qualifications, previously considered,[2] modern states extend the right of choosing representatives, and of eligibility to membership in the lower chamber, to a large number of citizens.

2. The distribution of representation is according to population. While some regard is paid to local governmental divisions, and while varying rates of increase in population prevent exact or permanent apportionment, these are mere modifications that do not affect the principle of proportionality.

3. Representatives are chosen on district ticket. Election by general ticket has been tried, but it subordinates the voter too completely to the party machinery and destroys the representation of minorities.

4. Direct election is the method of choice. There is a general feeling that no intermediate body should separate the holders of suffrage and their representatives in the lower chamber.

5. Ordinarily a plurality elects. While in several European states an absolute majority is required for election on the first

[1] United States Constitution, Article V. [2] See section 91.

ballot, such a principle, if universal, would be inconvenient and often impossible.

A more detailed view of the composition of the lower house in several important states follows.

1. *England.* The English House of Commons consists (1920) of seven hundred and seven members, representing county, borough, and University constituencies in England and Wales, Scotland, and Ireland. These are divided into election districts, averaging about sixty thousand inhabitants each, and each sends one member to Parliament. The University constituencies, sending fifteen men, average only five thousand electors each. Members of the House of Commons need not be residents of the district that they represent, the English principle being that each member represents the whole Empire. The term is five years, unless Parliament is previously dissolved, and a member cannot resign. He may, however, be appointed to one of several sinecure offices, acceptance of which vacates his seat.

2. *France.* The French Chamber of Deputies consists (1920) of six hundred and twenty-six members. The electoral law of France was revised in 1919. Under the new system the department becomes the electoral area, each being entitled to one deputy for every seventy-five thousand inhabitants, with a minimum of three. Each department entitled to more than six deputies is divided into districts electing three to six each. A complicated system of proportional voting is used in selecting the deputies in each department. Nomination is made by petition. France admits to her national legislature members with the privilege of voting from a number of her colonial possessions. Deputies must be twenty-five years of age and qualified voters, and each candidate may stand for one district only. The term of office is four years.

3. *Germany.* The German *Reichstag* consists (1920) of four hundred and sixty-six members, chosen in single election districts created by national law. This is the only part of the former imperial government that has been taken over without change, even of name, into the new republic. The constitution requires that all members shall be chosen by "universal, equal, direct, and secret suffrage by all men and women over twenty years of age, in

accordance with the principles of proportional representation." The term is four years. Apportionment is made by national law, the members being distributed according to population. For this reason more than half the entire membership comes from Prussia. Members of the *Reichstag* are considered representatives of the entire German people, not of the separate commonwealths, and are not bound by instructions, as are the members of the upper house.

4. *The United States.* The House of Representatives consists (1920) of four hundred and thirty-five members, representing the people of the United States according to the population of their respective commonwealths. Each commonwealth is entitled to at least one representative, and, on the basis of the census of 1910, each commonwealth is given one member for every 211,877 inhabitants; if its population exceeds by a large fraction an even number of times that many inhabitants, it is given an additional representative. By Act of Congress a redistribution of seats among the several commonwealths is made after each decennial census, and every commonwealth is divided by its legislature into districts, sending one representative each. It sometimes happens that one or more representatives are chosen "at large" by the voters of an entire commonwealth, pending a redistribution of districts. At present five commonwealths send one representative each, while New York is entitled to forty-three. The territories and colonies of the United States are represented by delegates who may share in discussion but may not vote. Representatives must be twenty-five years of age, citizens of the United States for seven years, and residents in the commonwealths from which they are chosen. The term is two years.

103. Comparative power of the two houses. In the general process of lawmaking the theory that the houses are equal and coördinate prevails. Either House may originate a bill or propose amendments, and the consent of both houses is necessary both for amendment and for the final adoption of a measure. The one exception to this parity of powers gives to the lower house in some states a greater control over the raising and spending of money. This distinction arose in the English Parliament during the fourteenth century, when the members of the upper house were largely

exempt from taxation, and the representatives of those who paid the taxes were naturally regarded as having the power to vote taxes and expenditures. In several other states a similar distinction has been adopted, partly in imitation of the English system, partly to avoid danger of deadlock on a question so important as that of revenue and expenditure, and partly because of the idea that the lower house, more directly and proportionately representing the people, should be intrusted with this power. While the British House of Lords may not originate, amend, or reject a money bill, the upper houses in Prussia and the Netherlands may reject, though forbidden to originate or amend. The United States Senate is forbidden to originate bills for raising revenue, but uses its power to amend or reject so freely that it has practically full power. The procedure in France is similar to that in the United States, except that the budget is presented by the ministry. Appropriation bills must originate in the lower house, but the upper house may amend or reject.

Though otherwise equal in theory, the two houses show in actual practice considerable difference in authority. The growth of democracy has shifted the balance of power from the upper houses, with their survivals of heredity and class rule, to the lower houses, more closely representing the interests of the masses. Especially in states having a parliamentary form of government is this development marked. If the administration is responsible to the people through their elected representatives, added weight is given to the lower house in case of contest with the upper. In France, Italy, Spain, and the majority of European states upper houses are comparatively weak; and in England the House of Lords, if it oppose the House of Commons on a point concerning which the people have definitely expressed their opinion, must yield. A bill passed by the Commons three times within two years is law, despite the Lords' veto. In the German republic and the United States the power of the upper houses is exceptional. The control of the United States Senate over treaties and appointments, its longer term and more select membership, and its historic traditions as representing the commonwealths have given it a prestige and power even greater than that of the House of Representatives.

The German *Reichsrat*, representing the governments of the component units of the republic, is a sort of advisory council.

In states where one House is not sufficiently powerful to force the other to yield, danger of deadlock is usually averted by the control which political parties exercise over both houses, or by a system of conference committees, composed of members of each House, whose duty it is to arrange compromises. In the constitution of the Australian commonwealth, where considerable difficulty has been caused by serious disagreement between the houses, the governor-general is authorized to dissolve both houses if the Senate persistently refuses to pass a bill submitted by the House; and in case the deadlock remains after the new election, a joint session is held and a majority vote considered final.

104. Internal organization. Legislative bodies usually determine their own internal organization, though in some cases this is partially provided for in the constitution. For instance, presiding officers are usually elected by the houses, but the vice president presides over the United States Senate; some member of the national cabinet presides over the German *Reichsrat*; and in the English House of Lords the lord chancellor, a member of the ministry and sometimes a commoner, presides. Most lower houses elect their own officials. Similarly, each House is usually allowed to judge of the qualifications of its members, although in England this authority has been delegated to the courts.

In the United States members of the legislature are not allowed to hold any federal executive or judicial office. In England and France, while the holders of certain offices are excluded from the legislature, and while appointment to office of any sort unseats a representative, he may, if reëlected after appointment, hold both offices. Obviously this does not apply to the English House of Lords. In the German lower house also a member may hold another office, if reëlected subsequent to his appointment; while the members of the upper house, acting under the appointment of their commonwealths, are not affected by holding other office. In the United States the heads of administration are excluded by law from membership in the legislature, and, except for the president, are prevented by custom from appearing or speaking before that

body; in England, Germany, and France the heads of departments are regularly members of the legislature and are the responsible leaders of the majority party or of a controlling coalition.

The size of modern legislative bodies, and the volume of business with which they must deal, necessitate some division of labor. This is secured by means of a system of committees, which act as units in practically rejecting the greater part of proposed legislation and in shaping the remainder for final consideration by the entire body. Since the actual work of legislation is largely in the hands of these committees, their composition becomes a matter of importance. In the United States, where this system has been most fully developed, the Senate elects its committees, though in practice the slate is prearranged by the party leaders. The committees of the House of Representatives, formerly appointed by the Speaker, are now elected by the House as the result of party caucuses.[1] In England the real committee is the cabinet, which shapes all legislation of importance. In France, except for matters of finance which are controlled by special standing committees chosen for one year by each House, the following peculiar system is in use. The members of each House are divided by lot monthly into *bureaux*, of which there are nine in the Senate and eleven in the Chamber of Deputies. From these are elected, each bureau contributing its member or members, special committees for almost every bill presented. In the former German Empire there were standing committees, some chosen by the emperor, in the upper house, and temporary committees based upon sections chosen by lot, as in France, in the lower house. How the committee system will work out under the present constitution cannot yet be assured. Thus far the cabinet, as in England, has directed the most important legislation. The new constitution provides for certain standing committees, especially for foreign affairs, in the lower house.

In the actual working of committees considerable difference is found. Committees play little part in revision in Germany;

[1] On March 19, 1910, the House voted that the Committee on Rules, the most powerful of its committees, should be elected by the House, and that the Speaker should not be a member. By this change the power of the Speaker has been considerably reduced.

important bills are sometimes not even referred to them. In France, where the legislature is all-powerful, and where the committees usually insist on revising the bills submitted to them, the method of choosing the committees often results in forcing a majority bill to run the gantlet of a hostile committee. The preponderance of the cabinet prevents powerful committees in England, while in the United States the party system makes committees of great importance.

On the subject of pay of members there is considerable difference of opinion. The United States by constitutional law, and France by statute, provide for salaried representation. A law for the payment of small salaries to members of the German *Reichstag* was passed in 1906, and a law for the payment of members of the English House of Commons was passed in 1911. On the one hand it is urged that moderate salaries will secure a better class of legislators, since men of intelligence, whether rich or not, will be able to serve, and that salaries remove the temptation to employ questionable means for gaining a livelihood when in state service. At the same time, any salary is likely to be sought by persons poorly qualified, and it does not necessarily remove the temptation to dishonesty. Those favoring unpaid service claim that it secures a better and more independent class of legislators, men of independent means usually being of superior intelligence and ability, and not likely to be tempted to use office for personal gain. It must be remembered, however, that the possession of wealth is not a sure test of ability, and that men of wealth are often most desirous for more wealth, and hence easily tempted to illicit means of gain.

It is a general principle of constitutional law and of custom that members of the legislature are free from arrest during the session. This is not absolute, since in England and the United States members may be arrested if charged with an indictable offense; in France and Germany, if taken in the commission of the misdemeanor or crime, or, with the consent of the chamber to which they belong, at any time. This latter provision makes it possible for the chamber to protect offenders, or to persecute members by permitting their arrest for party reasons. Freedom of speech is also guaranteed, members being responsible only to the House to which they

belong for statements made in debate. Germany and France attempt to add to this privilege special restrictions against insult to members of the legislature by persons outside that body.

105. Method of procedure. Just as legislative bodies find certain internal organization necessary for efficient action, so certain modes of procedure, determined either by constitutional law or by legislatures themselves, are universal. In assembly and adjournment considerable variation is found.

The United States Congress must assemble annually, and may be called in special session by the president. Joint agreement of the two houses is necessary for adjournment. In case of disagreement as to time of adjournment the executive may decide, and each House may adjourn separately for three days. The executive has no power of dissolution, nothing but the expiration of the term of its members destroying the legislature.

The English Parliament must assemble once in three years, but since appropriations are voted for a single year, annual sessions are held. Parliament is summoned by the crown, acting, however, on the advice of the prime minister, and adjournment for a short time may be undertaken by either House. The dissolution of Parliament may take place either by the expiration of the five-year term of its members, or by an order of the crown compelling new elections. This latter method is used at the request of the prime minister, if, when his cabinet is no longer supported by a majority in the House of Commons, he wishes an appeal to be made to the electorate to determine its will. The average length of a Parliament is about four years.

In Germany the legislature was formerly assembled and dissolved by the emperor. In the present republic the *Reichstag* must assemble annually and must hold its first meeting within thirty days of its election. A long interval between election and assembly, as in the United States, is impossible. The president may dissolve the *Reichstag*, but only once for the same reason, and new elections must be held within sixty days. The ministers must assemble the *Reichsrat* on demand of one third of its members.

The French legislature must meet annually and remain in session at least five months, and the president must call extra sessions

if demanded by a majority of each Chamber. Either House may adjourn for short periods, but the session must close for both houses at the same time. The president may adjourn the legislature, but not for a longer time than one month, nor more than once in a session. The president, with the consent of the Senate, acting through his ministers, who are responsible to the Chamber of Deputies, may dissolve the legislature. The consent of both chambers is thus practically required for their dissolution.

Publicity of procedure is required, either by law or by custom, in all these bodies except the German *Reichsrat*. In it alone are members obliged to follow the instructions of their governments. While representatives usually consider the wishes and look out for the interests of those whom they represent, the general principle of uninstructed representation characterizes modern legislatures. The instructed representation of the *Reichsrat* compels the members of each commonwealth to vote as a unit, while in the other bodies each member votes as he sees fit. This condition in Germany represents a survival of confederation.

The *quorum*, or number of members whose presence is required to legalize legislative action, is fixed by the constitution for the German *Reichstag* and for both houses in the United States; in the other chambers it is left to the determination of each House. In both houses of the legislatures of France and the United States and in the German *Reichstag* a majority of the members is necessary for a quorum. The position of the cabinet, representing the majority party and directing the process of legislation, makes a majority quorum unnecessary in England; consequently three members of the House of Lords and forty members of the House of Commons are sufficient to conduct business. In the United States a two-thirds majority of the Senate is required to ratify treaties and appointments; and the members of the House of Representatives vote by states in electing the president in case no candidate receives a majority of the electoral votes.

All lawmaking bodies find it necessary to draw up certain rules of procedure. The purpose of these rules is to prevent undue haste or ill-considered action, and at the same time to prevent delay or confusion. To accomplish these ends, while

making it possible for the majority to secure its will, methods of procedure are necessary whose intricacy of detail and formality often seem at first sight cumbrous and needlessly complicated. Among the most important rules are those concerned with attendance, counting of votes, order of business, and debate. The latter includes such questions as who may speak, how long he may speak, and how debate may be brought to an end. Most legislative bodies allow means by which a vote may be taken on the question of closing discussion and deciding the matter at issue, and time limits are often placed on debate. The United States Senate has recently provided a means of checking debate, but seldom uses it in practice.

Legislation originates in various ways. Kings and emperors initiate bills through their ministers; responsible executives, by recommendation or through the heads of departments, suggest legislation; and in parliamentary governments it is the practice for all measures of importance to be prepared by the ministry. Committees or commissions are often authorized to consider certain questions and recommend suitable measures, and these often hold public hearings at which interested persons may express their opinions. In Mexico the commonwealths composing the federation may introduce bills directly, and in republics any member of either House may propose legislation. Citizens or bodies of citizens may request certain legislation by petition, and in some states the electorate, by means of the initiative, may formulate or suggest certain lines of policy.

The procedure of legislation shows general uniformity. A bill usually receives several readings, and is considered by a committee which reports favorably or unfavorably before it is finally acted upon. A majority in both houses, a quorum being present, is necessary for passing, and certain influence over legislation is given to the executive. In the German republic provision is made for submitting measures to a national referendum. No such legislative device exists in the national governments of France, England, or the United States. In the French Senate a majority of its whole membership, not merely of a quorum, is required in order to pass a measure. The power of the executive varies. The president of

the United States has a veto which may be overridden by a two-thirds vote. The French president's suspensive veto compels the legislature to reconsider a bill, but a second passage by ordinary majority is all that is required. The legal veto power of the English king has never been destroyed by statute, but is never used in practice. The German president has no veto, but under certain conditions he may submit measures passed by the national legislature to a popular referendum.

106. Functions of legislatures. In the formulation of legislative policy three main systems are in use.

1. The will of an autocratic ruler, expressed through his ministers, is practically forced on the legislature, and their province in important legislation is limited to acceptance or feeble protest. This was until recently the situation in Austria, in the German Empire, and in the futile attempts at a representative legislature in Russia. At present, even in the most despotic states, the control of representative assemblies over lawmaking is increasing.

2. The will of the legislature, expressed through a responsible ministry representing the majority party, is supreme, and little or no power of resistance is left to the executive. This is the case in England, Italy, France, and other European states. In this system the heads of the administration are also leading members of the legislature, and harmonious governmental action is assured.

3. A balancing of authority between the houses and between the legislature and the executive may exist. In this case political parties, through caucuses guided by the leading members of each House, determine the legislative policy. If executive and both houses are in harmony, consistent and active legislation is easy to secure; if not, legislation is either prevented or secured only after a series of compromises. This is the case in the United States.

The functions of lawmaking bodies, making due allowance for differences in detail and in scope of authority, may be classified as follows:[1]

1. They formulate the law of the land, removing obsolete provisions and adapting legislation to the changing conditions of modern life.

[1] Dealey, The Development of the State, p. 205.

2. They control the finances of the state, determining the method of raising money, the amount to be raised, and the purpose of its expenditure.

3. They are gradually extending their control over the international relations of the state; and, by means of their power over the ministry or over finances, act as a check on this, the most important surviving field of executive authority.

4. They exercise many powers not purely legislative. In deciding contested elections, trying their own members, or impeaching other officials, they exercise judicial powers. In appointing or sharing in the appointment of officials, regulating minor executive offices, appointing commissions, and passing private legislation, they enter largely into administration.

At the present time the former confidence in legislative bodies is somewhat declining. On the one hand, commissions of experts are being created to deal with problems requiring more specific knowledge than a large body of legislators is likely to possess; on the other, the people, by initiative, referendum, and by conventions for the creation of constitutions, are extending their authority over the field of legislation. Side by side with these processes goes an extension of the sphere into which legislation is entering, the complex life of modern society demanding wider collective activity and more detailed regulation.

OUTLINE OF CHAPTER XIX

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THE EXECUTIVE HEAD

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   - *e.* Judicial

CHAPTER XIX

THE EXECUTIVE

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107. Evolution of the executive. In its broadest sense the executive department consists of all governmental officials except those acting in a legislative or judicial capacity. It thus includes the entire staff of officials engaged in administration, from the executive head to the humblest department clerk, — postmasters, commissioners, revenue officers, and even the army and navy coming within this classification. Numerically this branch of government far outnumbers the others combined; in the federal government of the United States the legislature and judiciary comprise less than fourteen thousand men, but the executive officials and employees number almost two hundred and fifty thousand.

However, since in administration there is need for prompt action and consistent policy, executive authority, in practically all states, tends to concentrate in a single head or in a small group of men. The advantages of numbers in legislation, where deliberation and caution are essential, become dangers when energetic action is

needed; hence political experience is decidedly favorable to a single-headed executive. To this leader of administration, sometimes including the chiefs of departments under him, the term "executive" is specifically applied.

In the evolution of governmental functions the executive represents, in the main, the surviving powers of the original organs of the state. Chief and council in primitive times performed all governmental duties. Gradually, as the state developed, division of labor in governing became necessary. First, the religious organization differentiated; later a distinction was made between judicial duties and other powers of administration, and a special set of officials, more or less correlated and more or less free from executive control, formed the judicial department. Still later the council, because of its expanding deliberative powers, developed into a lawmaking organ. This resulted not only in the idea that new law might be created, but also in widening the basis of authority until, in modern democratic states, the entire electorate shares in creating law and in choosing officials.

"The ancient powers of the executive, therefore, once so enormous, have been steadily reduced in scope by transfers of power to the church, the judiciary, the lawmaking body, and the electorate. The residue of powers is still centered in the executive department, but in place of one great council administering all such powers, there have been formed numerous subordinate departments, unified in the cabinet and under the authority of the head of the state, but differentiated in function. These administrative departments bear different names in different states and are not always separated on quite the same lines. Broadly speaking, however, there will be departments to regulate international relationships, such as war and diplomacy; to administer colonial possessions, if any, and state monopolies such as the postal service, railways, telegraphs, and mines; and to regulate important divisions of economic life, such as commerce, agriculture, and manufacturing. There will be departments also for the regulation and support of religion, education, and administrative judicial business, for the management of public finance, and for the supervision or control of local administration."[1]

[1] Dealey, The Development of the State, p. 159.

The executive department therefore consists of:

1. The executive head, whose accession, tenure, powers, and relation to other departments differ in different states.

2. The executive council, more or less distinct from the law-making body that has absorbed many of its powers.

3. The cabinet, or heads of the great departments of administration, forming more or less of a unit, and standing, in different states, in widely divergent relations to the executive head and to the legislature.

4. The civil service, or the numerous subordinate officials in the administrative departments, whose selection, tenure, and organization form one of the leading problems of modern politics.

108. The executive head. In the beginnings of political organization authority was centered in a group of men, among whom, because of age or wisdom or personal prowess, a leader arose. This position might be attained by birth, by popular choice, or by force, and was usually supported by the idea of divine right inherent in the patriarchal system. The natural desire to perpetuate power in the same family, aided by the close organization of the patriarchal group, led often to hereditary rule. Thus an autocratic monarch, supported by divine sanction and surrounded by a group of advisers, that similarly formed a hereditary nobility and priesthood, was the usual organization under which the earliest states emerged. While in theory the power of such a ruler was absolute, in reality his actions were limited by custom, religion, and ceremony, and by the influences and intrigues that permeated his court. The development of monarchy has been characterized by the placing of numerous checks on the autocratic powers of the ruler and by a transfer of many of his functions to other organs; at the same time his authority has been made more definite and unhindered in such powers as he retained. In some states, especially those of comparatively recent origin, the hereditary ruler has been replaced by an executive head chosen by some form of election.

At the present time all types of executive headship may be observed. The native peoples of Africa are still governed by tribal chiefs. Autocratic monarchs supported by divine sanction are found in Japan and Turkey. China, Russia, Austria, Hungary,

and Germany have replaced hereditary by elective executives, while Great Britain has developed constitutional monarchy to the point of making her king a ruler in name only. Similar differences in real power characterize the executive heads in those states that have replaced heredity by election. The president of Mexico is in reality an autocratic monarch; the president of the United States, though limited by the Constitution to the exercise of delegated functions, is a most powerful official. The French president in practice exercises but a few nominal powers, and the president of Switzerland is merely the chairman of an executive committee acting under the control of the legislature.

In general, two broad lines of classification characterize executive headship in modern states:

1. *As to method of choice and tenure of office.* Here the distinction is between hereditary and elective executives. In most European and Asiatic states the executive head enjoys a lifelong tenure, which, on his death, passes by some form of heredity to his heir. Such a system is a historical product resulting from the political evolution of the state. In modern democratic states "it implies the existence of a royal house whose foundation reaches far back of the revolution which changed the state from its monarchic or aristocratic to its democratic form. It implies that that house has accommodated itself to the spirit of the revolution, — has, in fact, placed itself at the head of the revolution and brought it to its consummation; has retained its hold upon the people; has kept, and still keeps attached to itself, the most capable personalities of the state, the natural leaders of the people; is content to surrender sovereignty and retain a limited governmental power only, and, in the exercise of this power, follows always a liberal and popular policy." [1] While such a system is repugnant to democratic ideas in America, it has certain advantages. It gives stability and continuity to political institutions and creates a respect for authority and law. It contributes a certain prestige to international dealings, and, by its permanence and traditions, tends to create a sense of responsibility and dignity in the heads of government and to maintain a stable and efficient civil service.

[1] Burgess, Political Science and Constitutional Law, Vol. II, p. 308.

England and Italy are the most important modern states with hereditary executives, and the difference between the English and the continental law of succession is significant. The English law, which admits women to the succession, and which does not require princely marriages for royal princesses, makes possible frequent changes in the royal house and permits the infusion of unroyal blood. These tend to weaken reverence for the monarch and help to explain the unimportant powers of the English king as compared with those of rulers of the states of continental Europe, many of which had until recently hereditary executives with large and responsible powers in government.

The American republics, and France and Switzerland in Europe, have elected executives, although the methods of election differ. Peru, Brazil, and Bolivia elect their presidents by direct popular vote; Mexico, the Argentine Republic, and Chile choose their presidents by indirect election. The president of the United States is chosen indirectly, by means of an electoral college in which each commonwealth is represented by as many electors as it has members in Congress. This system was intended to secure able men by giving the power of choice to a specially selected body. In actual practice, by means of the system of nomination worked out by political parties, and by the popular election of presidential electors, the president is really chosen by direct popular vote. The French president is elected by the two houses of the legislature sitting together as a National Assembly. This provision was placed in the French constitution because of the fear that a president proceeding from the people would become too powerful. Experience with Napoleon I, and, under the constitution of 1848, with Napoleon III, showed the existence of such a danger. The president of Switzerland is chosen by the federal legislature from among the seven councilors that have charge of the administrative department.

In the case of elected executives the term of office and the question of reëligibility are important. The desire to make the chief executive responsible, directly or indirectly, to the people naturally results in comparatively short terms and infrequent reëlections. The term of the Swiss president is one year, and he is not immediately reëligible; in practice the vice president succeeds. The

presidents of the American republics hold office for terms of four to six years, and in most cases are not reëligible. The president of Mexico, who, from 1884 to 1911, was continuously reëlected at the expiration of each four-year term, was an exception. The Constitution of the United States does not prohibit reëlection, but the precedent, set by Washington, of refusing a third term is strongly supported by public opinion. The French president is elected for seven years and is reëligible.

Executive heads usually enjoy personal irresponsibility while in office. Hereditary executives are ordinarily exempt from removal, although the British Parliament has taken unto itself the power to depose a monarch and to change the royal line. The national assembly of the German republic may, by a two-thirds vote, suspend the president, or he may be removed by a majority vote of the people. Some method of removing elected presidents by impeachment is usually provided, the lower house of the legislature making the arraignment before the upper house acting as a court. In case of the removal or death of an elected executive some provision for succession is necessary. In the United States the vice president succeeds, followed by the members of the cabinet in a prescribed order. In France the council of ministers is temporarily invested with executive powers, pending the election of a new president.

2. *As to actual power.* Here the distinction is between nominal and actual executives and depends largely upon the relation of executive to legislature. The two great types of government — parliamentary or cabinet, and nonparliamentary or presidential — under which modern states may be classified, have already been discussed[1] and need be only briefly referred to. In the former the executive head is a nominal ruler, the real executive being the cabinet, a group of men whose tenure of office is dependent upon the will of the legislature. In the latter the tenure of the executive head is independent of the legislature, and certain powers are exercised by him without regard to legislative wishes.

It must be remembered that the distinction between hereditary

[1] See sections 80, 81, 97.

and elected executives and between nominal and actual executives is a cross classification. The hereditary English king and the elected French president are nominal executives, both states having cabinets that are responsible to their legislatures and that exercise the real powers of administration. The long term and reëligibility of the French president are therefore of little significance. On the other hand, the hereditary Japanese emperor and the elected American president are actual executives exercising large and independent powers. In most cases, however, an elected executive is the real head of the state, while a hereditary monarch, except in those states whose government is still despotic, is a nominal ruler, though often exercising considerable influence because of the traditional respect for the royal office.

109. Executive councils. The development of the executive branch of government has usually been marked by the rise of some form of council, which, at first serving in an advisory capacity, often secured considerable control over the actions of the executive head and exercised important administrative functions in its own right. The more recent formation of representative legislative bodies has somewhat diminished the importance of such councils, often, in fact, partially absorbing their organization as well as their functions. Even in these cases important survivals of their administrative, as distinguished from their legislative, powers may be traced. A brief survey of executive councils in leading modern states follows :[1]

1. *England.* While the British Parliament, through its control of finance, was developing legislative powers, a council, growing out of the old *Curia Regis,* was aiding the crown in its administrative and judicial duties. This body, to which the name Privy Council was later applied, grew under weak kings until it exerted a considerable control over the crown and exercised wide legislative, judicial, and administrative functions. At present the Privy Council consists of about two hundred persons appointed by the crown, and includes the heads of the various departments, heads of departments under preceding administrations, certain important governmental and ecclesiastical officials, and a number of members

[1] Goodnow, Comparative Administrative Law, Vol. I, Bk. II, Div. II.

of the peerage. Such members as are invited by the crown meet once in three or four weeks, the clerk and six members forming a quorum. The Privy Council has lost most of its judicial powers; its legislative functions have been taken over by Parliament, and its administrative duties are now largely exercised by a small group of its members known as the cabinet. It still retains its power of advising the crown in issuing ordinances, known accordingly in England as "orders in council"; its approval is necessary for the validity of ordinances issued by local authorities, and its members alone have the legal right to advise the crown. Accordingly the powerful cabinet, the real executive in England, has no legal existence and can exercise no legal powers except as a part of the Privy Council. Several administrative and judicial boards, now more or less independent, have had their origin in this body.

2. *France.* The executive council in France has had a brilliant history. During the Absolute Monarchy it was almost the only guarantee of good government, and under the Empires it exercised large legislative powers and accomplished an enormous amount of work. When legislative bodies were established in the republics, the council was limited to advisory executive duties. The present Council of State consists of one hundred and sixteen members, some of whom are appointed by the president, others being chosen by competitive examination. It is divided into four administrative sections, each advising certain administrative departments; and one judicial section, which acts as an administrative court. Members of the cabinet may attend the general assemblies of the council and vote on matters concerning their departments. The executive or the legislature may send proposed bills to the council for advice; its advice must be asked in the case of ordinances; and the president and ministers usually submit to the council questions which are valuable as offering precedents for future action. While the government is not bound by its advice, an enormous number of matters, usually of a legal or political nature, are submitted to it.

3. *Germany.* The German *Reichsrat* is not only a branch of the legislature but also an executive council with extensive functions. It participates in important appointments, and it must be

kept informed by the national administrative departments of the conduct of national business. Its consent is required if the cabinet wishes to assign the execution of national laws to the state authorities. Administrative regulations issued by the cabinet concerning the construction, operation, and traffic of railways must also receive the approval of the *Reichsrat*.

4. *The United States*. In the colonies there were usually governors' councils whose consent was necessary for the validity of certain of the governors' acts; and in the commonwealths of Maine, Massachusetts, and New Hampshire there are still governors' councils, whose consent is necessary for the governors' appointments. In the national government, the Senate, acting as an executive council separate from the House, and usually in secret session, exercises a control over two important powers of the president. Its consent is necessary for the most important appointments; and it must, by a two-thirds majority, approve all treaties before they shall be effective.

110. Heads of departments. As the business of the state became more complex, five well-developed branches of administration arose, — foreign, military, judicial, financial, and internal affairs. Other branches were often formed by subdividing these, as in the case of naval affairs, formerly a part of the military department; or departments for colonies, agriculture, and commerce, which are now important enough for separate administration. Sometimes a geographical basis of division was followed, as in the case of the British Secretary of State for India or the British Secretary for Scotland. All states, accordingly, have numerous departments, each devoting itself to some particular administrative activity; and it has come to be a recognized political principle that each of these fundamental departments of administration should be under the authority of a single head. Such heads of departments, often called ministers, as a body form the cabinet; and their relation to executive and legislature, and their functions, demand consideration.

The relation of the cabinet to the other departments of government, depending in the main on the term and tenure of the heads of departments, may be best viewed by a brief summary of the organization of the cabinet in leading modern states.

1. *England.* The English cabinet has had a gradual development, and even now rests on custom rather than on law. The king's ministers in England, as elsewhere, were at first his chosen advisers, often hostile to the growing powers of Parliament, whose only control over them was that of impeachment. As the king's advisers, or Privy Council, as they were called, increased in numbers, a smaller group, or "cabinet," took over the most important duties. When Parliament, after the overthrow of the Stuarts, was recognized as supreme, William III, to secure its support, chose his ministers from its majority party. At first these men did not act as a body, neither did they resign if defeated; both of these principles have developed since the middle of the eighteenth century. At present the British cabinet consists of from fifteen to twenty men, appointed by the crown on the nomination of one of their number, who is first chosen as prime minister. The prime minister is the leader of the party in power in the House of Commons, and usually holds the office of First Lord of the Treasury, partly because its nominal duties give him opportunity to devote himself to questions of general policy, and partly because of its extensive powers of appointment. The members of the cabinet, all of the same party as the prime minister, are usually members of one or other of the Houses of Parliament, where they take an active part; at the same time they serve as heads of the most important departments of administration. They determine their policy in secret session and act as a unit. If defeated in the House of Commons, they resign collectively; or, if they believe that their policy will be supported by the people at large, they require the crown to dissolve Parliament and they stake their tenure on the outcome of the following election. The prime minister is therefore the actual executive in England. He controls the other heads of departments, and, in turn, is dependent upon the legislature, because of the necessity of maintaining a favorable majority in the House of Commons.

2. *France.* Nominally, the president in France appoints and dismisses the ministers. Actually, the ministers are controlled by the Chamber of Deputies, to which they are collectively responsible for the general policy of the administration and individually

responsible for their own personal acts.[1] As an administrative council, the ministers exercise supervision over the administration of the laws and give unity to the affairs of state; and every act of the president must be countersigned by the minister of the department concerned. The ministers are usually members of the legislature and have the right to speak before it whenever they so desire. When the support of the Chamber of Deputies is lost, the ministers resign; and any individual minister may be forced out of office if a vote is taken expressing lack of confidence. This is frequently done after an *interpellation*, by which the minister is compelled to answer before the Chamber questions concerning the policy of his department. Accordingly, the chief of the council of ministers, a statesman who commands the confidence of the Chamber of Deputies, and who is usually minister of the interior, is the real head of the administration. On his recommendation the other ministers are appointed, and he can force them out of office if dissatisfied with their actions. The position of the French president is therefore very difficult. Elected by the legislature for a definite term, he has apparently large powers; but the fact that all his acts must be approved by ministers responsible, not to him, but to a Chamber of Deputies, often controlled by parties other than that to which the president belongs, makes his authority nominal. The attempt of France to combine parliamentary and presidential government is a novelty in political science.

3. *Germany.* In the former German Empire the chancellor, appointed by the emperor and responsible to him alone, was the head of the administration, and all other ministers were his subordinates. In the new republic the working executive is a group of ministers, appointed by the president, but responsible to the national assembly for all the acts of the government. Like Great Britain and France, Germany has adopted the cabinet system of government, but while in the former countries the maintenance of harmonious relations between ministers and legislative majority is entirely a matter of custom, in Germany the constitution provides that "the national chancellor and the national ministers require for the administration of their offices the confidence of

[1] Loi constitutionnelle du 25 février, 1875, Art. 6, sec. 1.

the national assembly; each of them must resign if the national assembly by formal resolution withdraws its confidence." Ministers may be present at meetings of the national assembly, may take part in the proceedings of the national council, and may introduce bills. The national assembly may impeach ministers before the supreme judicial court for violation of the constitution or of the laws.

4. *The United States.* The president, with the approval of the Senate, appoints and, on his own initiative, removes the heads of departments, whose responsibility is therefore merged in that of the president. They have no collegiate existence under the Constitution, and even in administering their departments are subordinate to the president. The president is not obliged to take their advice, and the resignation or removal of one member does not necessarily affect the others. By law they are not allowed to hold seats in Congress, and by custom they are not permitted to speak before it. Accordingly the president is the only bond uniting the executive departments. What is called the cabinet is a voluntary association of the heads of departments, whose opinions the president may require but need not accept, and whose tenure is dependent upon his will. The legislature, except in last resort by impeachment, exercises no control over their tenure of office; although, by detailed statutory provisions prescribing their fundamental activities, it exercises considerable control over their functions.

The functions of the heads of departments, in addition to their political position as leaders in formulating the policy of government, and as advisers of the executive and agents for the discharge of his powers, may be summed up under the following heads.[1]

1. *Appointment and removal.* Heads of departments usually have the right to appoint many of the subordinate officials of their departments. Sometimes the most important subordinates are appointed by the executive head, and laws frequently regulate the conditions and qualifications for appointment. The power of removal usually accompanies the power of appointment, although in Germany office is legally recognized as a vested right and

[1] Goodnow, Comparative Administrative Law, Vol. I, pp. 146–158.

cannot be taken away except on conviction of crime or after a trial before a disciplinary court.

2. *Direction and supervision.* States differ in the authority which heads of departments may exercise over the actions of their subordinates. In England and the United States this supervisory power has usually been small, especially in the case of central over local officials. In Germany and France heads of departments have always exercised considerable control over their subordinates. At the present time all these states show tendencies toward compromise. England and the United States are extending the directive powers of heads of departments, while France and Germany are giving larger discretionary powers to subordinate officials.

3. *Ordinances and special acts.* In all states heads of departments exercise a delegated ordinance power, filling out by general orders the details of administrative law. In addition many special acts must be performed; contracts must be made and decisions on special questions given. Against special acts appeals may be taken to the courts in England and the United States; in France the Council of State is the final authority for both special and general orders.

111. The civil service. In its broadest sense the executive department includes the general body of officials serving under the heads of the various administrative departments and known collectively as the civil service. These are distinguished on the one hand from legislative and judicial officers, and on the other from members of the army and navy, who are under special military and naval organization and rule. As to functions the civil service may be broadly divided into:

1. Those who have discretionary powers, for example, the heads of the more important subdivisions of administration.

2. Those who perform their duties under definite directions, for example, minor officials and clerical employees.

More important is their relation to the heads of government, and the question of their selection, removal, and tenure. In most states executive officials form a hierarchy, subordinates being appointed by the head of the department or by persons responsible to him. This secures unity of purpose and prompt, vigorous action. The commonwealths of the United States are, however,

an exception to this rule, since, in them, subordinate officials and even some heads of departments are elected by the people and are not directly responsible to any superior official. Besides, numerous boards and commissions are created and given delegated powers with little provision for coördination or supervision. While such a system works fairly well in the American commonwealths, because their position in the Union and the detailed provisions of their constitutions permit but little exercise of discretionary powers, the present tendency is toward centralization and increasing executive control.

In carrying on administration in local districts two general systems are in use. Sometimes, as in the United States federal government, the system is highly centralized. National officials, such as collectors, customs officials, Indian agents, etc., each acting under the direction of the head of his department, are placed in the various local districts of administration. In other cases, as in the federal government of Germany and in the American commonwealths, officials of local administration are given certain duties as agents of the superior government. On the continent, when such a system is in use, the local officers are frequently appointed by the central government and act under its control. In England and the United States local units usually choose their own officials, and the control of the central authority over such officials, even when acting as its agents, is small.

The members of the civil service may hold office by hereditary right, by election, either direct or indirect, or by appointment. If appointed, they may be chosen at the will of the appointing official or in accord with certain regulations, usually including competitive tests and assignment to office on the basis of merit. Office may be held for life, for an indefinite term during good behavior, or for a long or short term of definite length. In most states the civil service is permanent in tenure, and, except for the heads of departments, is not affected by changes in government caused by the rise or fall of administrations. Such a system, unless it degenerates into a narrow and inefficient bureaucracy, emphasizing the red tape of routine at the expense of larger interests, tends toward efficiency and honesty in public service.

In the United States the civil-service problem has been one of unusual difficulty. Except for a few officials, such as the federal judiciary, who hold office for life, the greater number of subordinate executive officers were formerly appointed by the president or by the heads of departments. According to the decisions of the courts, the power of dismissal is incident to the power of appointment, and while this power was exercised very sparingly during the first forty years of our national life, the act of 1820, which set a four-year term for many federal officials, and the "spoils system" begun by Jackson in 1829, started the American practice of using the civil service as a means of rewarding political followers. The abuses growing out of this system led to a demand for civil-service reform, and the Civil Service Act of 1883, extended by later acts and executive orders, provided for open competitive examinations, free from political influence, with appointment from the highest grades. The greater number of administrative positions are now included in the "classified service," to which the competitive-examination method applies, and a corresponding increase in efficiency and many improvements in political methods are claimed.

112. Functions of the executive. The executive department of government exercises two fairly distinct sets of functions.

1. *Political.*[1] These include the relations of the executive to the other departments of government, and its determination of questions of general policy, both external and internal. The executive, representing the unity of the state, "conducts diplomatic negotiations, commands the army and navy, declares war, makes peace, negotiates treaties, receives and sends diplomatic embassies, and appoints all officials who assist in these duties. As representative of the state in its intercourse with its subjects, the executive from time to time makes announcements of policy, inspects the workings of the governmental system, and makes or recommends improvements."[2]

2. *Administrative.* These include the mass of business details which modern government demands. The executive "is charged

[1] Called "governmental" in France.

[2] Dealey, The Development of the State, p. 147.

with providing for the collective needs of the citizens which the initiative of individuals or associations of individuals could not adequately satisfy; it must gather together the resources of society both in men and money in order that society may continue to exist and make progress; it must play the part of the man of business in society . . . ; must maintain order and further the general prosperity."[1] "The head of the executive is also head of the administration; as such he appoints its officers, organizes its departments, assigns to each its respective functions, and oversees the working of the entire administration; enforcing, if necessary, his orders and the law of the land by means of the war and police powers placed in his hands."[2]

This distinction, which is more clearly recognized on the continent, particularly in France, than in England or the United States, is important. In England and France, where political powers are in the hands of the cabinet, acting under the control of the legislature, the powers of the executive head are largely administrative. In the United States and Germany the chief executive is both a political authority and the head of the administration. In the commonwealths of the United States the governor is merely a political chief, and administrative powers are exercised largely by governmental organs independent of his authority.

The various functions of administration have already been suggested and will be more fully developed in a later chapter.[3] At present attention will be given to the powers exercised by executive heads in modern states. These, while differing in detail, show marked similarity and may be broadly classified under the following divisions:

1. *Diplomatic.* These include the negotiation of treaties, the appointment of diplomatic agents, the right to receive or refuse to receive the diplomatic agents of other states, and to wage defensive war. Certain checks on the unrestrained exercise of these powers by the executive are usually included in modern constitutions or imposed by legislative enactment.

[1] Aucoc, Conférences sur l'administration, etc., I, 78; quoted by Goodnow, Comparative Administrative Law, Vol. I, p. 50.

[2] Dealey, The Development of the State, p. 148.

[3] See Chapter XXV.

2. *Legislative.* These include the assembling, adjourning, or dissolving of the legislature, the right, directly or indirectly, to initiate legislation, frequently some form of veto power, and the duty of promulgating the laws.

3. *Military.* The executive head is usually commander in chief of the military and naval forces. As such he appoints and dismisses officers, establishes and supervises martial law, and in time of war wields immensely increased power.

4. *Administrative.* In civil administration the executive head has large powers of appointment and removal. He supervises the execution of administrative laws and usually has some degree of ordinance power.

5. *Judicial.* In addition to the appointing of judicial officials, executive heads frequently possess the power to issue pardons and reprieves.

In regard to the above functions the executive heads of leading states differ less than in their tenure or in their relation to the legislature. One important point of difference, however, must be noted.[1] The residuary powers of government — that is, those powers not forbidden to the government and not specifically provided for — are, in the constitutional system of the United States, left in the commonwealth legislatures; in the new German republic and in France, in the national legislatures; and in England, in the crown. Accordingly the ordinance powers of the president of the United States, the president of Germany, and the president of France are specific and statutory, limited to those things over which they have been given a delegated authority. In England the crown has a general ordinance power over all subjects not regulated by statute or common law. While the other executives may act only when specifically permitted, the English executive may act unless specifically forbidden. This is a valuable power in emergency, and enables prompt executive action without the delay incident to legislative procedure; yet, since the legislature may at its pleasure further limit these residuary powers, arbitrary executive authority is prevented.

[1] Burgess, Political Science and Constitutional Law, Vol. II, pp. 317–319.

OUTLINE OF CHAPTER XX

References

Evolution of the Judicial Department

1. as to organization
2. as to the status of individuals before the law
3. as to procedure and punishment

Functions and Requisites of the Judiciary

1. functions
2. requisites
   - *a.* Trained in the law
   - *b.* Impartial

Relation of Judiciary to Executive

1. executive control over the judiciary
2. judicial powers of the executive
3. judicial control over the executive
4. administrative courts

Relation of Judiciary to Legislature

1. legislative control over the judiciary
2. judicial powers of the legislature
3. judicial influence in legislation
4. declaring acts unconstitutional

Organization of the Judiciary

1. in England
2. in France
3. in Germany
4. in the United States
   - *a.* Jurisdiction of the federal courts

CHAPTER XX

THE JUDICIARY

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113. Evolution of the judicial department. The development of the judicial department of government may be traced along several related, yet fairly distinct, channels.[1]

1. *As to its organization.* In the primitive state disputes and breaches of custom were private matters, settled by compromise or by individual or family vengeance. The state, entering as the arbiter of custom, later became the creator of law, the adjudicator of disputes, and the prosecutor and punisher of offenses. At first the judicial function was not differentiated from other political functions, and was exercised by the executive and his advisers, who, in addition to creating and administering law, decided disputes and punished offenders. As political business increased and personal property rights became more complex, special officials, expert in the law, branched off from the other organs of administration and formed a distinct department. This process, however, was gradual, and historic remnants of judicial powers are still

[1] Dealey, The Development of the State, pp. 175–187.

exercised by the executive and by the legislature, whose differentiation preceded that of the judiciary. The ordinance and pardoning powers of the executive and the impeaching power of the legislature are examples.

Present judicial systems are complex, though showing general resemblances. Civil and criminal cases are distinguished, and for each there is a series of courts, the lowest disposing of petty cases, higher courts having jurisdiction over more important cases, and a final court having jurisdiction over special cases and hearing appeals from the lower courts. This general system is modified by both a separation and a division of judicial powers. From the standpoint of the former special courts are created as various branches of administration arise and demand a specialized form of jurisdiction. Of such nature are courts-martial for the discipline of the army; admiralty and consular courts, necessitated by foreign commerce; probate and divorce courts to regulate family rights and inheritance; and ecclesiastical courts, where church and state are not separated. In continental states administrative courts[1] form a separate branch of the department. From the standpoint of the latter the jurisdiction of courts is, for convenience, limited to certain areas, that of the courts of first instance coinciding with local divisions, and that of the higher courts covering wider areas. In the United States this territorial division is further complicated by the separation of federal and commonwealth courts, practically duplicating the entire system. The judicial system as a whole, considered as a subdivision of administration, includes a numerous body of officials who aid in bringing cases before the courts, in administering judicial procedure, and in carrying out judicial decisions. Such officials include constables, prosecuting attorneys in criminal cases, juries, and prison officials. Thus the simple and direct, though often inconsistent and tyrannical, judicial procedure of the primitive state has been superseded by a complex and specialized system. Uniform law and procedure and a fair chance for the accused to prove his innocence has been gained, in some cases, however, at the cost of tedious delay and of failure to punish the guilty.

[1] See section 115.

2. *As to the status of individuals before the law.* In former times there was not uniform law for all, neither were all equal before the law. Slavery was universal and slaves had few legal rights. Women were legally at the mercy of their husbands, and children, of their fathers. Society was often divided into castes with varying legal rights. Even in the Middle Ages the clergy were a privileged class with their own law and courts, and the nobility possessed special rights and privileges. The growth of democracy has created the present legal theory that all individuals are equal before the law, and class legislation is accordingly frowned upon. The delay or evasion of punishment in the case of wealthy offenders and the favorable legislation secured sometimes by questionable means are survivals of the older order.

3. *As to procedure and punishment.* Methods of trial and forms of punishment have also undergone considerable transformation. The cruelty and injustice of trial by torture, or of superstitious appeals to divine power through oaths, ordeals, or personal combat have been replaced by more reasonable process. Similarly, the desire for revenge or retaliation, resulting often in punishment of undue severity, and falling on the innocent as well as the guilty, has been replaced by the idea of prevention of crime and protection of society, and of the reformation of the criminal. Modern penal systems still show survivals of former methods. Capital punishment is a form of retaliation, and lynch law is a reversion to the most primitive form of vengeance; fines, whose amounts are adjusted to the degree of offense, suggest the medieval *wergild;* and imprisonment, the usual penalty, contains the element of punishment as well as that of prevention. Modern juvenile courts and reform schools, together with improved methods of prison administration and greater knowledge of the causes and conditions of crime, may be expected to diminish the proportion of offenders with resultant social benefit.

114. Functions and requisites of the judiciary. The judicial department performs the important function of applying to specific cases the principles of custom, statutes, and written constitutions. It determines what are the facts in any given case, what is the law that applies to the case, and how the legal rights of the parties

concerned are affected. In this process it frequently happens that cases arise not entirely covered by existing law, or that discretionary powers must be exercised by judges in determining the exact meaning of the law, in expanding its details, or in applying general principles of justice and morality. The judicial department thus becomes a creator of law, at least for the particular case concerned. In England and the United States, where judicial decisions are quoted as precedents and usually followed in similar cases, such "judge-made law" forms a considerable part of the entire system of jurisprudence.

Since judges, serving as points of contact between the will of the state and its individual members, perform functions of so great importance, they should possess at least two requisites:

1. They should be thoroughly trained in the law. Judicial decisions demand a developed judgment and a vast amount of legal knowledge. This is largely secured by selecting judges from the ranks of skilled lawyers, and by a healthy public opinion which respects the judicial office and disapproves of incompetency in its incumbents.

2. They should be impartial. Neither personal nor political interests should interfere with the absolute integrity of justice. The necessary judicial independence may be best secured by a permanent tenure and an adequate salary. In most states judges hold office during good behavior, and their salaries are not affected by the number or nature of their decisions, and may not be diminished during their terms of office. Efforts are made to remove them from the influence of the other departments of government, and to prevent the appearance of any interested motive in their decisions. Many of the commonwealths of the United States, where judges are elected for short terms and paid small salaries, sometimes in the form of fees, are unfortunate exceptions. The inferior caliber of such a judiciary and the play of personal and political motives in its decisions are inevitable results.

While the importance of the judicial department and its great powers, especially in Anglo-Saxon countries, can scarcely be overestimated, it must be remembered that, in addition to the control of the executive if it appoints the judges, and of the legislature

which must appropriate the funds necessary to maintain their activities, the courts are dependent upon the action of the executive department to enforce their decisions; that they must apply the law as it exists, subject to change by the legislature; and that they can act only when cases are brought before them, and when these cases come within their jurisdiction. These restrictions are usually sufficient safeguards against a tyrannical use of the large and independent powers of the judiciary.

115. Relation of judiciary to executive. The relation of the judiciary to the executive may be viewed from the standpoint, first, of the judicial powers of the executive and its control over the judiciary; second, of the administrative powers of the judiciary and its control over the executive. The former is in most respects a historic survival of the original unlimited powers of the executive. The latter, concerning which continental practice differs from that in England and America, depends upon the prevailing theory as to the proper separation of powers and the relative importance of government and individual liberty.

The executive exercises a certain control over the judiciary because, in last resort, judicial decisions are effective only if supported by the force of the state, and this force is at the command of the executive. Besides, the executive is usually given large powers of appointment to judicial offices; and while the permanent tenure that follows appointment prevents continued control, the complexion of the judiciary may be influenced by the political principles maintained by the executive at the time of appointment. The best example of this was the appointment of John Marshall to the United States Supreme Court, by means of which numerous decisions favorable to the federal theories of government were given long after the Republican party, maintaining different views, had secured control of the other departments.

Of more importance are the judicial powers that are still exercised directly by the executive department. These survivals of the original judicial powers of the state are concerned mainly with the maintenance of discipline in the army, navy, and civil service, and in the application and enforcement of administrative law. Treason laws, courts-martial for military or naval offenders, and military

law in times of riot or rebellion are examples. Modern states, however, create constitutional and statutory safeguards against the arbitrary use of these powers. The right of courts to uphold their dignity by punishing offenders for "contempt of court" is a historical survival of the time when a court was a mere division of administration, and disregard of its commands was an offense against the majesty of the king. The pardoning power of modern executives is a still more direct survival of their original judicial functions.

The most important judicial powers of the executive are found in the states of continental Europe, where a separate system of law and courts, controlled by the executive department, exists for the trial of officers of administration charged with illegal acts in the performance of their official duties. These administrative courts are characteristic of the different attitude that the government assumes to the individual in these states, as contrasted with that prevailing in England and the United States. In the latter the officers of the executive are responsible to the ordinary courts for their official actions; and officials are frequently held personally responsible for acts which, in the opinion of the courts, exceed their lawful authority. The legal immunity of the crown in England and the special procedure of impeachment for the president and other high officials in the United States are, of course, exceptions. Even members of the army and navy are responsible for the performance of illegal acts, although done at the command of their superior officers; and, in general, the military administration is subordinated to the civil. In this way the Anglo-Saxon states believe that individual liberty is guaranteed against executive encroachment, and that the formation of a specially privileged bureaucracy is prevented. Naturally this gives large powers to the judicial department, which not only punishes offending officials, but, by the issue of writs of mandamus and injunction, may compel officials to perform or to refrain from performing certain acts.

On the other hand, the states of Europe, emphasizing efficient government rather than individual freedom, believe that administrative officials, in the discretionary performance of their functions, may have occasion to violate the laws that apply to ordinary citizens.

In such case they are called to account before special administrative courts composed mainly of superior executive officials. These apply a special form of law and procedure, basing their decisions mainly on administrative ordinances, and taking into consideration political expediency and general principles of justice. Under this system a series of administrative courts exists parallel with the ordinary courts, the former applying administrative law to public officials, the latter applying private and criminal law to private individuals.

Separate administrative courts originated in France, where the national administration was powerful and closely centralized, while the judicial bodies — the local *parlements* — were not united into a national system. The powerful monarchy naturally resented interference with its acts on the part of the courts, and royal officers took the place of the older judicial bodies. Montesquieu's theory as to the separation of powers was accordingly interpreted to mean that the judiciary should not interfere with the executive; and the separate system of administrative courts has been adopted by every government established in France since 1789, and imitated by the other states of continental Europe. Even in the United States traces of administrative jurisdiction are found in the semijudicial bodies acting under some of the administrative departments and in the commissions appointed for the regulation of certain public or quasi-public interests.

Both the English-American system of subordinating public officials to the ordinary courts and the continental system of separate administrative courts have certain advantages and disadvantages. While the former offers better protection to individuals against executive aggression, it must be admitted that the application of administrative law by the ordinary courts results in a technical procedure and in the formation of a number of special remedies. On the other hand, separate administrative law and courts makes possible a simpler law and procedure for public officials in their administrative acts, and allows considerable elasticity in applying principles of expediency and justice. At the same time there is the constant probability of conflict between the two series of courts or between the administration and the ordinary

courts. Sometimes both kinds of courts claim jurisdiction; sometimes both refuse to take jurisdiction. The fact that some legal method of settling these conflicts is provided does not obviate the delay and expense of litigation required to bring a case before the court that has final power of decision. Even more important is the danger that justice may not be secured under administrative courts if governmental policy demands a certain decision. Individual rights are often sacrificed when the administration is both the offender and the judge of the offense; and experience shows that the principle of separate administrative law and courts works out in practice as a means of strengthening the executive.

116. Relation of judiciary to legislature. In addition to the fact that the law which courts interpret and apply is, in the main, created by legislatures, and that legislative appropriations are necessary for the maintenance and operation of the judicial department, legislatures exert a further control over the ordinary judiciary. Except in the United States, where the federal judiciary is provided for and its tenure fixed by the Constitution, judicial departments are created by legislative statute and may be modified or abolished by legislative enactment. Even in the United States the judicial department has been organized by Congress, and might be gradually destroyed if Congress abolished each judgeship at the expiration of the term of its incumbent, and Congress may hasten this process by impeachment.

In most states certain judicial powers have been retained by the upper houses of their legislatures. The reasons for this are historical, and considerable difference exists as to the parties and subjects over which they have jurisdiction, and the nature of the penalties that they may impose. In England the House of Lords is nominally the highest court of appeals. In practice its judicial functions are exercised by the lord chancellor, who may be a commoner, and by four jurists appointed by the crown to serve as Lords of Appeals. Impeachment, though it was an important means of controlling the great officials of government in the development of the English constitutional system, is no longer needed, as the ministry is responsible to the people through the House of Commons. The framers of the United States

Constitution, influenced by the theory of the separation of departments, limited the judicial powers of the Senate to the trial of governmental officials for indictable offenses, and restricted the penalty to dismissal from office and disqualification for future officeholding. This power of impeachment has been very sparingly used, and the independence of the executive and the judiciary have accordingly not been threatened, although a negative form of responsibility has been secured. The upper house in Germany has no power of impeachment, but the lower house may suspend the president and propose his recall by popular vote. The French Senate is given the widest powers of impeachment. It has jurisdiction not only over officials but over any person considered dangerous to the security of the state, and no limit is placed on the penalty it may inflict. Since the French president and his ministers are practically responsible to the Chamber of Deputies, and the ordinary courts are able to deal with all offenders, the possession of such extensive powers by the Senate seems unnecessary.

The most important form of judicial control is that exercised by the courts in declaring statutes void because enacted by bodies in excess of their legal powers, or, as usually stated, because they are "unconstitutional." This principle has reached its highest development in the United States. In England enactments of minor legislative bodies may be declared illegal by the courts, and in Germany the statutes of the commonwealth legislatures have occasionally been set aside by the courts as contrary to the commonwealth constitutions. In Canada and Australia the judiciary, in interpreting the parliamentary statutes on which these governments are based, exercises analogous functions. However, in none of these states may the judiciary declare acts of the supreme legislature unconstitutional. Statutes enacted by the national lawmaking bodies of England, France, and Germany are accepted as final, even if in direct violation of written constitutions, and the constitution of Switzerland distinctly provides that every statute of the Federal Assembly must be regarded as valid.[1] In the United States, on the other hand, not only do commonwealth courts disallow acts of the commonwealth legislatures, if contrary to commonwealth

[1] Swiss constitution, Art. 113.

constitutions, but the federal courts disallow commonwealth statutes, if opposed to the federal Constitution or to treaties or statutes made in pursuance thereof, and even set aside acts of Congress, if contrary to their interpretation of the federal Constitution.

This large judicial power is not distinctly set forth in the Constitution of the United States or in those of its commonwealths, but has been gradually developed by the courts as desirable for the maintenance of a federal government with coördinate departments, and of a written constitution. While it was suggested in some early decisions of English courts that acts of Parliament might be so unjust that the courts would refuse to enforce them, this suggestion never became an established rule. On the contrary, the principle that acts of Parliament could not be questioned by the courts became firmly established in constitutional law. In the colonies, however, appeal was frequently taken against actions of the colonial legislature or executive to the king in council, and the courts of Great Britain declared acts of the colonial legislatures invalid on the ground that they exceeded the powers granted by the colonial charters. Thus grew up in America the idea of written constitutions, of delegated powers, and of judicial review of legislative acts.

Even before the adoption of the federal Constitution the courts in several commonwealths declared acts of the legislatures unconstitutional, the first distinct issue being in 1780, in the New Jersey case of *Holmes* v. *Walton*. The history of the federal convention shows that it was intended to give the federal courts power to nullify commonwealth statutes if contrary to the federal Constitution, but it is not clear that this power extended to acts of Congress. In 1803, in the case of *Marbury* v. *Madison*, the Supreme Court declared an act of Congress unconstitutional, and therefore void; and in the case of *Fletcher* v. *Peck*, in 1810, a commonwealth statute was for the first time distinctly annulled. Similar decisions, disallowing commonwealth statutes, were frequently made, but not until 1851 was another federal statute declared void. The *Dred Scott Case* (1857) was a broad application of the power of judicial control; and since the Civil War judicial revision of federal legislation has been rapidly extended, the

Legal Tender Case (1870), the *Civil Rights Case* (1883–1884), the *Income Tax Case* (1895), and the *Insular Cases* (1901) being the most important in which the jurisdiction of Congress has been questioned. This principle of judicial revision, worked out by the federal courts, was gradually adopted in the commonwealths with reference to their laws, and is now an accepted part of our jurisprudence. It leads to a strong respect for constitutions and prevents radical legislation; at the same time, because of the difficulty of constitutional amendment, it provides an elastic method of extending constitutions to meet new conditions. This is especially true in the federal government of the United States, where decisions of the Supreme Court have become the usual form of constitutional amendment.

It must be remembered, however, that the courts, even in the United States, may act only when the case comes under the jurisdiction that is given to them by the Constitution and the laws. With many broad questions of constitutional law affecting executive and judiciary the courts may not deal; and they may act only when the rights of legal persons are involved and when cases are properly brought before them. Even then the decision, while it is conclusive as to the parties before the court and serves as a precedent for future cases, does not repeal the statute concerned. It declares that in the particular case before it the statute will not be applied because it never was a valid statute. American respect for the judiciary, due largely to the fact that our government has been created and controlled, and our public opinion determined, in the main, by lawyers, causes the other departments of government to yield deference to such decisions, and the objectionable statutes are repealed or become obsolete through nonenforcement.

117. Organization of the judiciary. The preceding discussion paves the way for a brief outline of judicial organization in leading modern states:

1. *England.* From early times the administration of justice in England was centralized. Judges of the courts of Common Law went from London on circuit, and the Court of Chancery at Westminster extended its jurisdiction over the entire kingdom. By the judicial reorganization of 1873–1879 greater uniformity was secured and

jurisdiction was more logically distributed; at the same time a certain amount of decentralization was secured by the creation of local county courts, which have largely absorbed the functions of the earlier circuit judges. At present the judicial system of England is organized as follows: The House of Lords, really the lord chancellor and the four "law lords," is the court of last resort. Below this stand the Court of Appeal and the High Court of Justice. The latter is subdivided into a chancery division, a king's bench division, and a probate, divorce, and admiralty division; and the judges of these courts try cases on circuit in "assize towns" in various parts of the country. The lord chancellor, who presides over the chancery division, and the lord chief justice, who presides over the king's bench division, are appointed by the crown on the recommendation of the prime minister; other judges on the recommendation of the lord chancellor. Below these are the county courts and the justices of the peace. The latter are usually country gentlemen, serving without pay, and play an important part in English life. Acting singly, they may hold preliminary examinations or issue warrants; two or more justices may hold petty sessions; and all the justices of the county meet quarterly in quarter sessions for their more important judicial functions. All criminal cases, except petty cases coming before courts of summary jurisdiction, are tried before juries. In civil cases juries are falling into disuse, although in most cases a jury trial may be demanded by either party.

2. *France.* As already indicated, the judicial department in France is divided into administrative courts for the trial of public officials, and ordinary courts for the trial of private individuals. The former consist of the Council of State, which is the court of last resort in administrative questions, and a number of courts and councils, each of which is directly subordinate to the Council of State. Of the ordinary courts the Cassation Court at Paris has final authority. Below it are twenty-six courts of appeal, which hear cases brought up from the courts of first instance in the local areas. Justices of the peace have jurisdiction over petty cases. All judges are appointed nominally by the president, actually by the minister of justice. If dispute arises as to whether the administrative courts

or the ordinary courts have jurisdiction in a given case, there is a Tribunal of Conflicts whose province it is to decide. In France juries are not used in civil cases, the judges deciding questions both of fact and of law. Juries are used, however, to determine innocence or guilt in criminal cases. The preliminary examination of criminal indictments is not conducted by a "grand jury," as it is in England and the United States, but by an examining magistrate (*juge d'instruction*), who may dismiss the case or send it for trial.

3. *Germany.* The new constitution of Germany contemplates a system of national courts, both judicial and administrative, existing side by side with the courts of the separate commonwealths. Until recently the courts of the various commonwealths were also national courts, the judicial districts being determined and the judges being appointed by the commonwealth governments. In the new system national statutes prescribe a uniform judicial organization and procedure, and the decisions of the national court give uniformity to the law. The republic also has uniform civil, commercial, and criminal codes. As in France, there is in each commonwealth a series of administrative courts and a series of ordinary courts, with a court of conflicts standing between the two jurisdictions. Juries are used only in the graver criminal cases.

4. *The United States.* The judicial system of the United States is divided into two distinct series of courts, the commonwealth and the federal. Each commonwealth has its own set of courts, usually of three grades, and these apply the criminal and civil law of the commonwealth. Judges are sometimes appointed and sometimes elected. Federal courts, whose existence is provided for by the Constitution, consist of a supreme court, the circuit courts of appeals, and a number of district courts. Federal judges are appointed by the president, with the consent of the Senate.

The jurisdiction of the federal courts extends over two classes of cases, according to:

1. *The nature of the parties concerned.* Cases in which the commonwealth courts could not properly have jurisdiction, such as cases concerning foreign diplomatic agents, or disputes between two commonwealths, and cases in which commonwealth courts

could not have entire jurisdiction, such as suits between citizens of different commonwealths, come under the jurisdiction of the federal courts.

2. *The nature of the questions involved.* Cases of admiralty or maritime jurisdiction, and all cases arising under the Constitution, laws, and treaties of the United States come under federal jurisdiction. This enables the national government to maintain the same interpretation of the Constitution in all parts of the United States, and to enforce a uniform system of federal law.

The division of jurisdiction among the various federal courts is determined by act of Congress, some courts having both original and appellate jurisdiction, others having appellate jurisdiction only.

Congress has also created several special courts, such as the Court of Claims, to try cases of claims against the United States; and the Court of Private Land Claims, to try cases arising under the treaties of territorial cession made with Mexico in 1848 and 1853. In addition, Congress has created courts for the District of Columbia, for the territories and dependencies, and for the reservation Indians. Such courts partake of the nature of both federal and commonwealth courts. Except in the higher courts, whose decisions are mainly on appeals, juries are ordinarily used in both civil and criminal cases.

While each commonwealth determines the organization of its own judicial system and creates its own law and procedure, there is a general uniformity in these respects to be found over the entire United States. This is due, in the main, to the basis of English common law upon which the legal system of almost all the commonwealths rests, and to the spirit of judicial comity between the commonwealths.[1] The Constitution of the United States[2] requires the courts of each commonwealth to give full faith and credit to the records and judicial proceedings of the courts of other commonwealths, and decisions are often quoted as precedents in commonwealths other than that in which the decision was rendered.

[1] Garner, Introduction to Political Science, pp. 583–585.
[2] Article IV, section 1.

Over many cases federal and commonwealth courts have concurrent jurisdiction, although the defendant in such cases may usually remove the case to a federal court if he chooses, or may have the decision of a commonwealth court reviewed by the Supreme Court, if any right arising under the Constitution or laws of the United States is involved. In practice many cases over which the federal judicial power extends are left to the commonwealth courts, although in such cases a transfer to the federal courts may be made either before or after a decision has been given. In these and other ways the judicial system of the United States is adjusted, federal and commonwealth courts complementing each other, with final authority, in case of disputed jurisdiction, lying in the Supreme Court.

OUTLINE OF CHAPTER XXI

References

Functions of Political Parties

1. make democracy workable over large areas
2. make decision of great issues possible
3. prevent too great separation and division of powers

History of Political Parties

1. in england
2. in the united states
3. in continental europe

Present Political Parties

1. in the united states
2. in england
3. in france
4. in germany

Party Organization

1. in continental europe
2. in england
3. in the united states
   - *a.* Caucuses and conventions
   - *b.* Committees

Party Reform

1. advantages and disadvantages of the party system
2. evils in american politics
   - *a.* Spoils system
   - *b.* The "machine" and the "boss"
   - *c.* Connection between national and local politics
   - *d.* Connection between business and politics

CHAPTER XXI

POLITICAL PARTIES

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118. Functions of political parties. A political party consists of a group of citizens, more or less organized, who act as a political unit, and who, by the use of their voting power, aim to control the government and carry out their general policies. While existing, in the main, outside the legal organization of the state, political parties form at present the vital force that keeps the machinery of the state in operation.

When the functions performed by political parties and the reasons for their existence are analyzed, the close connection between political parties and democracy is evident.[1] In despotisms, where the people have no legal voice in government, they can express disapproval or desire for change only by assassination or armed rebellion. By such methods an obnoxious ruler may be

[1] Macy, Party Organization and Machinery, Introduction.

deposed, but through them there is little hope of establishing permanently a more tolerable form of government or of substituting a consciously formed general will for the will of the despot. Gradually, however, the voluntary association of subjects to resist tyrannical rulers developed democracy. Large bodies of men became accustomed to form and execute common purposes; the principles of election and representation in selecting governing officials were introduced; the electorate was widened; and restrictions were placed on government by means of written constitutions and of referendums. In the democracies thus established some form of organization was necessary in order that the people might continue to formulate and execute their will; and the voluntary associations, through whose efforts democracy was secured, were perpetuated in political parties, by means of which democracy is workable. Political parties are never found *except* in democracies; political parties, of some degree of organization and influence, always exist *in* democracies. In the Greek cities and in the Roman republic, factions, or parties, controlled the government; in the free cities of the Middle Ages similar groupings arose; and in all modern democratic states parties exist in the form of associations, back of the government, into which the people are organized.

In democracies political parties arise, or new groupings are formed, in the presence of great issues. When difference of opinion exists on general questions of vital interest to the state, minor disagreements are forgotten and parties are formed as people take sides on the main questions. Such division may be based upon racial differences, especially if one race is an invader or conqueror. In central Europe parties follow national lines. Sometimes religious differences give rise to parties, as was the case in all parts of Europe during the sixteenth century, and is now illustrated by the political organization of the Catholic party in Germany. Usually questions of internal organization or policy lie at the basis of parties. The contest between king and people gave birth to political parties in England, and traces of the same contest are found in the monarchial parties in France, the republican parties in Spain, and the parties formed on the lines of class

distinction in many parts of Europe. The form of union to be established by the American commonwealths and the extent of national powers were questions on which the people of the United States disagreed. At present most political issues are economic in nature, and parties represent common interests in occupations, common economic classes, or common ideas as to economic policy and regulation. The landed classes, the capitalists, the labor party, socialists, free traders, free silverites, and similar groupings are typical.

Even in the absence of important issues or of natural lines of cleavage political parties may retain their organization and strength. This will be the case in democratic states when the political party has become, legally or extralegally, a part of the actual government, and acts as a unifying agency, securing harmony of action among the various departments and divisions of the governmental system. In the United States, where the principles of separation and division of powers have been carried to greatest extremes, there is particular need for such a force. Executive, legislature, and judiciary are independent and may work at cross purposes. National, commonwealth, and local governments have distinct functions with few points of contact. To bind these disconnected organs into a unity and secure the harmonious operation of the entire government of the United States, by controlling the officials and the policy of all departments in all areas, is the work of political parties; and to do this work they have been compelled to develop and maintain a complex and powerful organization. In England the party performs a similar function in a different way. The effectiveness of the cabinet system, by which the party in power controls the executive through its majority in the legislature, depends upon permanent, well-organized parties; the one in power directing both legislation and administration, the one in opposition ready to take up this same function at any time.

In both these states, then, and to a lesser degree in other modern states, political parties serve as the motive force and the unifying agency that make democracy workable over large areas. They are a constant protest against too great separation of administration from legislation, and of local from central organization.

Since the government of every state is a unit and must act as a unit, defects in organization, preventing unity, are made good by the growth of extralegal institutions whose strength will depend upon the work that they must do.

A general summary of the functions of political parties may be stated as follows. In democracies they furnish the organization by which, through elections, referendums, and the influence of public opinion, general will may be formulated and carried into effect. When great issues arise they furnish a means by which citizens may subordinate lesser differences of opinion and decide questions of vital concern. Where considerable separation or division of powers exists parties serve as a unifying force, which, by controlling the various organs of government, secures harmonious and consistent policy and administration. Accordingly, other things being equal, political parties will be best organized and most powerful in the most democratic states, in states where the most critical issues are found, and in states organized most completely on the basis of separation and division of powers. Various combinations of these conditions determine, in the main, the party situation in modern states.

119. History of political parties. The present position of political parties, recognized by all as essential factors in political life, and in some states made a legal part of the governmental system, is comparatively new. Even in the eighteenth century party government was not foreseen ; and parties, commonly called "factions," were considered dangerous to public welfare. Party contests suggested disorder and violence, the overturning of established governmental institutions, revolution, and the death or exile of defeated leaders. Even in England, where party struggles were carried on earlier and with greater freedom than elsewhere, such conditions were found. The framers of the Constitution of the United States, while creating a form of organization that made strong parties inevitable, made no provision for them in their plan, and hoped that "factions" would be unknown in America. The great contribution of the past century has been the creation of parties, all of whom are loyal to the established governments and institutions of their states, so that the opposition party may come

into power without a shock to the political traditions of the state. Such is now the case in England and the United States. In the newer democracies of the continent, France and Italy for example, party groups, called "irreconcilables," opposed to the existing form of government, are still found.

Considerable grounds for the former distrust of political parties were given by the history of those states in which political parties were foreshadowed. The class struggles and factional quarrels at Athens and Rome, the Guelph and Ghibelline contest that disturbed the Italian republics, the riots between the supporters of the house of Orange and the Republicans in the Netherlands, and the civil war in England showed the inevitable tendency to form voluntary associations as soon as some degree of democracy existed, and seemed conclusive proof that such factions were dangerous to public peace and political stability.

In their modern form political parties originated in England. Even in Elizabeth's time the Puritans appeared as a body of men holding the same views on definite religious and political questions, and trying to secure their establishment in opposition to the wishes of the queen and her ministers. As the contest between king and people developed in the Stuart period, the opponents of arbitrary government in church and state became known as Roundheads, while the supporters of the king were called Cavaliers; and these soon formed the opposing factions of a civil war. The Restoration brought the Cavaliers into the ascendancy, but the opposing party revived, and by the time of the debates over the Exclusion Bill (1679) the factions received the nicknames of Tory and Whig. These parties represented two different theories of English constitutional relations. The Tories were the upholders of absolute monarchy; the Whigs desired a monarchy limited by Parliament. The Tories desired no change in the organization or functions of government; the Whigs subordinated the form of government to the needs of public welfare.

After the Revolution of 1688 the more extreme Tories became Jacobites and finally died out; the remainder became the supporters of the king of England, and gradually came to recognize the rights of Parliament and of the people. With the accession of the

house of Hanover the Whigs, the opponents of royal prerogative, found themselves the supporters of the new dynasty, while the Tories, the upholders of royal power, were the opposition. This destroyed the original issue, and party enmity and political violence subsided. For a time parties degenerated into personal factions among the ruling classes, but the way was prepared for new parties, based on modern issues and holding their present position in the government. By the time of George III the present Liberal and Conservative parties had been formed. The Liberal party became the advocate of reform and progress. They favored the widening of the suffrage, the more equitable system of representation, the removal of religious disabilities and of restrictions on industry and trade. The Conservative party emphasized order and security. They held to the old historic view of the constitution, and desired to safeguard vested interests and resist dangerous innovations.

At present the old distinctions are passing away. Many reforms have been the work of the Conservatives, and new issues such as home rule, protection, imperialism, and public education are supported or opposed by members of both parties. The present crisis (1914) over home rule will probably cause a tightening of party lines; but, in general, party organization is maintained, as in the United States, because of the work that the party must perform in government.

In the American colonies party lines were drawn similar to those in England and in each colony a conflict was carried on between the governor, representing the crown, and the assembly, representing the colonists. The division within the colonies between the friends and the opponents of royal prerogative became national in scope and organization as the Revolution approached, — Patriots and Tories representing respectively the enemies and the friends of England. In every colony the Patriots secured possession of the government, and the outcome of the war destroyed the Tories as a political power, since those who did not migrate to Canada or England were compelled to accept the new state of affairs.

After independence was secured the form of government became the issue. Those who desired a strong central government and

favored the adoption of the Constitution organized as Federalists, their opponents as Antifederalists. After a bitter fight in every commonwealth the adoption of the Constitution destroyed the Antifederalists as a party, but the same general division has existed to this day. On the one hand is the progressive party, favoring liberal interpretation of the Constitution, protective policy, imperialism, and general extension of governmental power. On the other is the conservative party, upholding a policy of strict construction and anti-expansion of governmental powers. In general the party in power leans to the former, and the party in opposition to the latter attitude.

During Washington's administration the opposing elements crystallized into the first parties under the Constitution. The Federalists, led by Hamilton, favored strong national government and protection of property interests. They were friendly to England in her great contest with France, and were supported by the commercial and manufacturing classes. The Republicans, led by Jefferson, emphasized the rights of the individual and opposed extensive governmental authority. They were friendly to France, where the revolutionists were proclaiming similar principles, and secured their main support among the agricultural and laboring classes.

A number of causes led to the disappearance of the Federal party. Among these were the growing democratic spirit of the country, internal dissensions among the Federalist leaders, and unpopular methods, such as the Alien and Sedition acts and opposition to the War of 1812. Besides, the Republicans, who came into power in 1801, took over the strongest principles of the Federalists and were joined by many former Federalist leaders. As a result, from about 1816 to 1832 there were no distinct issues and no strong parties. Men divided on personal grounds, and this so-called "era of good feeling" was really a period of bitter personal politics.

By 1830 new parties began to form. Jackson, extending the ideas of Jefferson concerning popular sovereignty, applied the strict-construction principles in the form of opposition to the tariff, the national bank, and internal improvements. His followers took the name of Democrats, and his opponents, centering around Henry

Clay, took the name of Whigs. During the succeeding twenty years the chief tendencies were the growth of democratic spirit — due to industrial and commercial development, increased immigration, and the opening up of the West — and the rise of modern political methods, such as party organization, nominations, the caucus, and the spoils system.

The slavery controversy split both parties and led to a sectionalization of issues. Numerous antislavery organizations, concentrating their strength, formed the Republican party, and in 1860 elected their president. While the Civil War removed the leading issues, the Republican and Democratic parties retain their organization and contest elections in all governing areas. As a survival of the Civil War, the Democratic party remains firmly intrenched in the South ; but most issues are now raised for campaign purposes, and the party in power adapts its policies to circumstances and to public opinion.

In addition to the main current of politics in the United States, numerous small parties, standing for particular or temporary interests, have arisen, but have never exerted a controlling influence in national politics. Among these may be mentioned the Know-Nothing party, the Prohibition party, and the various Socialist and Labor parties.

The history of political parties in the various states of continental Europe is a complex and confusing story. Even a brief outline of their origin and growth would necessitate extensive discussion of the internal and international difficulties of the past century. Arising during the various revolutions through which the existing degree of democracy has been evolved, they neither represent consistent lines of development nor are they based on uniform political principles. In no European state have two permanent and well-organized parties developed, nor do parties occupy as prominent a place in government as they do in England and the United States. Party groups are formed on lines of race, religion, class spirit, and economic interests. Personal followers of former royal lines or of present popular leaders form additional political groups, and shifting combinations are held together temporarily by common grievances or by common hope of gain. In

each state peculiar conditions of national life or particular phases of national history give rise to groups that, for a time at least, consider themselves political associations. Party history is therefore a series of kaleidoscopic changes, concerted action in time of crisis or under a powerful leader being followed by disintegration as minor differences again assert themselves or as parties are manipulated by skillful statesmen. Aside from the parties formed on racial or religious lines, and from those opposed to the existing form of government, various shades of conservatism and radicalism are represented. In general, the Socialists exhibit the most definite and consistent policy, branches of this party being found in all the leading states.

120. Present political parties. The preceding discussion of the history of political parties and of their functions suggests certain conditions of good party government. For instance, the existence of two distinct and well-organized parties is presupposed. If more than two parties exist, difficulties are met in controlling the government by means of the party system. Besides, the party out of power must not be revolutionary. It must be recognized as a legitimate body, entitled to attain to power and trusted to rule without overthrowing fundamental political principles. Further, certain lines of cleavage are undesirable. Racial and religious differences, or distinctions based on social classes, are dangerous, since they kindle bitter passions, each side believing that the other is composed of enemies that are threatening the very foundations of the state. Real differences of opinion on public matters of general concern form the natural basis for political parties.

In applying these general principles to the existing party situation in modern states considerable variation is found. On the one hand stand England and the United States, each of which has two strong parties, based, originally at least, on public issues, and furnishing the motive force for government. These states differ, however, since in England, whose government is parliamentary, the party is a legal part of the political system, thoroughly in harmony with the organization of government. In the United States the party has grown up outside the constitutional system and operates it indirectly. In Europe a different situation is found.

Numerous party groups, based on racial, religious, and social issues, struggle, through shifting combinations, to control the government. Irreconcilables, opposed to the existing form of government, are found in several states. Accordingly, while the forms of party government have been imitated, the foundations upon which that system rests are lacking, and parties play a subordinate part. Naturally, then, popular control is weakened, and actual power rests with an official bureaucracy or an irresponsible legislature.

The party situation in leading modern states may be outlined as follows:

1. *The United States.* At the present time political parties in the United States show the most highly developed organization and exercise the greatest powers. A number of reasons for this condition may be given. Great extent of territory and a large population composed of various nationalities, and including numerous interests and sections, make it difficult for the majority, unless organized, to express its will. The separation of executive and legislative departments and the division into federal, commonwealth, and local governing areas create a system of governmental decentralization, necessitating some extralegal unifying agency to secure harmony in action. Moreover, the large number of elective officials, the frequent elections, and the fact that reëlection is unusual, have given strength to parties through their control of nominations and elections.

This is particularly true in the election of the president. In the actual working of the method provided by the federal Constitution for electing the president, it soon became evident that the real selection would not depend upon the judgment of the electoral college. Since its members assembled by commonwealths, not meeting together for deliberation, and since the exclusion from the college of federal officeholders kept out the leaders in national life, the college became a mere machine for registering popular will.[1] In the large electorate thus created for electing the national head, some organization to control nomination and election was inevitable; and, unprovided for in the constitutional system proper, it grew up outside the framework of the government and is adjusted

[1] Lowell, The Government of England, Vol. I, p. 440.

to it with difficulty. As a result, owing to the extralegal position of the party and the irresponsibility of its leaders, an exceptionally strong organization is needed to enable it to do its work.

The peculiar relation of parties to government in the United States is worked out suggestively in Goodnow's "Politics and Administration." A brief summary follows: The primary functions of the state are the making and the enforcing of law. Practical political necessity demands harmony between the expression of state will and its execution, and popular government requires the subordination of the executing to the expressing authority. In the United States, because of the extreme to which the theory of separation of powers has been carried, this harmony and subordination is not provided for in the legal organization of the state; hence it has been secured by means of political parties, which, as extralegal parts of the governmental system, aim to control both legislation and administration.

Again, in every large state a distinction between central and local governmental functions is necessary, and this division is particularly evident in federal states. Here again, however, the harmonious working of government demands the subordination of local to central administration. In the United States division of powers is carried to great lengths, and local officials are almost entirely free from central administrative control. Political parties, therefore, controlling both central and local politics, and using offices as rewards for party service, are the real bonds of union. As a result, then, of the great amount of work that parties must perform in the United States, their powers are large and their organization is strong, and since they exist outside the legal organization of the government their leaders are irresponsible.

The "spoils system" and the "boss" are therefore natural results of American conditions, and the chief needs are greater centralization in administration, granting at the same time local self-government in the form of local legislative power, and legal recognition of political parties by governmental regulation of nominations and elections. By such means the work required of the parties will be lessened and party leaders will be made responsible.

At the present time no distinct issues separate parties in the United States. The "free-silver" movement of 1896 split both parties, especially the Democratic, and for a time it seemed that horizontal party lines, corresponding to social classes, would be formed. Colonial expansion, after the Spanish War, created a new issue in 1900, on which the Democrats are conservative, opposing our foreign colonial policy, while the Republicans stand for the control of subject peoples in the interest of expansion and commerce. The tariff is still a favorite subject of controversy, although the desire for large national income and the influence of complex business interests prevent the party in power, whichever it may be, from making radical changes. On most other questions the parties follow an opportunistic policy, adapting their platforms to current public opinion and to the various interests within the party. Organization is jealously maintained and the chief aim is to win elections and get the offices. Existing minor parties, such as the Prohibitionists and the various socialist and labor groups, exert little influence in national elections and have no representation in Congress, although the voting strength of the Socialists is increasing.

2. *England.* While, in the United States, parties developed after the formation of the constitutional system, as a means of working the cumbrous machinery already provided, in England the existing constitutional system, in its actual operation, grew out of party life and contests. Accordingly, the party, standing outside the legal organization in the United States, occupies in England a more definite legal position and is more thoroughly in accord with the form of government. The continued existence of two parties in the House of Commons led gradually to the principle of cabinet responsibility. Ministers, at first responsible as individuals, came to realize that success depended upon consistent parliamentary support, and that greater security resulted from presenting a united front, standing or falling together. The Opposition learned that their chances of attaining to power were increased by the same procedure, and this organized rivalry in turn strengthened the parties. As a result the party forms an integral part of the English national system. The majority in the

House of Commons, acting under the guidance of the party leaders, controls the government. Because of this harmonious relation between government and party there is no need that the national parties maintain strong organization in local areas. Consequently England is spared many of the evils of overorganization prevalent in American local government.

Several serious objections may be raised to party government as developed in England. Its successful operation depends upon the continued existence of only two parties. If a strong third party arises, or if parties split up into numerous groups, the administration, dependent upon temporary coalition, becomes weak and its tenure is made unstable. The English system also involves the enforced absence from public life of some of her best administrators. The leaders of the Opposition, no matter how able or experienced, are debarred from public service until their party secures a parliamentary majority. Besides, the Opposition is not always genuine. Desirous of ousting its opponents, it naturally assumes an attitude of criticism, regardless of the merits of the question at issue, often delaying or preventing the passage of measures necessary for public welfare. Even within the party, issues are not decided solely on their merits, since the necessity of supporting the policy of the party as a whole involves compromises, resulting in certain limitations on personal freedom of opinion and action.

The existing political parties represented in the English Parliament are four in number. The two major parties, Liberals and Conservatives,[1] while maintaining, in general, their respective traditions of progress and order, differ on few essential points. Broadly speaking, the tendencies of the Liberals are more democratic, more interested in internal than in foreign affairs, and more favorable to the laboring classes and to local government. They are also supported by the Nonconformists in religion. The Conservatives have more respect for existing institutions; they have usually favored an aggressive foreign policy; and they strongly support the interests of the Church of England, of the landowners, and of the liquor sellers. These general tendencies, however, show

[1] Now often called the National Unionists.

many exceptions during the last forty years, the stress of party rivalry often uprooting established party principles.

The minor parties, the Irish Nationalists and the Labor party, have more definite purposes. The former aims at the separate welfare of the Irish people. Favoring the abolition of coercion acts, the transfer of land from large holders to the farmers, and especially Irish home rule, they form temporary alliances with any party that will give assistance, never losing sight of their main objects. The Labor party aims at legislation favorable to the working classes; wider democracy, including woman suffrage; local option for liquor selling; and the application of various socialistic principles.

3. *France.* Political parties in continental Europe take the form of numerous and constantly shifting groups, having few traditions and little real power. Since no group is strong enough to control all the others, a dangerous sense of irresponsibility results and government is carried on by the temporary coalition of those groups that have common interests or expect mutual benefits. This condition is particularly distressing in France, whose government is based on the cabinet system, presupposing two strong parties; and which has adopted the principle of election, even in choosing its executive head. The difficult position of the French president and the instability of ministries in France are notorious. At present there are a half dozen or more major party groups, with minor subdivisions. Nationalists and Conservatives represent the reorganized monarchial parties. Republicans shade off through varying degrees of radicalism to socialism. The moderates, known as Government Republicans, supported by various coalitions, usually form the ministries. Other groups are known as Progressist Republicans, Radical Republicans, Socialist Radicals, and Socialists.

Several causes for the subdivisions in French parties may be stated.[1] There is a general lack of political consensus. Ever since the French Revolution parties opposed to the form of government have existed, and each radical change in party has caused a revolution in the organization of the state. Surviving from the old

[1] Lowell, Governments and Parties in Continental Europe, Vol. I, pp. 101–137.

régime are the monarchist supporters of the Bourbons, and from the two Empires come the partisans of the Bonapartes. Both of these "irreconcilables" oppose the republic, whose supporters, though now largely in the majority, are divided among themselves. French political thinking is theoretical rather than practical. In pursuing impossible ideals of government separate groups, having different ideals, refuse to combine for the purpose of making the best of existing conditions on the basis of compromise. Lack of party organization prevents party unity. In France party contests are local rather than national, and personal rather than political. Besides, several features in French institutions intensify party divisions. The practice of requiring an absolute majority for election to the Chamber of Deputies [1] encourages all groups to nominate candidates for the first ballot and then make the best bargains possible with the leading candidates for the second. The haphazard system of choosing committees in the Chamber [2] and the frequent changes in their make-up prevent cabinet control over legislation, especially over finance, and is inconsistent with the principles of party government. Finally, the practice of addressing interpellations [3] to the ministers, followed by debate and vote, makes ministries unstable, since they often resign when defeated on trivial questions, and stirs up a hostile spirit between Ministry and Chamber.

As a result of the party situation in France all ministries are coalition ministries, short-lived and weak. Their members are rivals rather than colleagues; hence their policy is inconsistent and halting. A change of ministry does not mean a change of party, but of individuals; hence members of the cabinet have less interest in its strength, since, if defeated, they stand a good chance of membership in the next cabinet. Finally, the cabinet, not supported by a permanent and faithful majority in the Chamber, must maintain its temporary support by granting privileges, by distributing offices, and by currying favor with the deputies and their constituents. In France, because of its highly centralized administration, the fondness of its people for strong rulers, and their attachment to persons rather than to issues, a presidential form of government

[1] See section 94. [2] See section 104. [3] See section 110.

would probably develop into a monarchy. If the republic is to remain, — and the declining strength of the monarchial groups points in that direction, — it seems inevitable that cabinet government must be maintained. To work this effectively, two strong parties, with stable organizations, should be developed, and considerable progress in this direction has recently been made.

4. *Germany*. In Germany, as in France, a number of party groups are found. This condition was not troublesome under the empire, when the government was held together by a strong hereditary executive, instead of by a weak ministry, and when the appointive composition of the upper houses and the class system of voting served as checks on popular control. Under these conditions parties served as restraining rather than as directing forces. Under the present republic, however, the numerous groups, as in France, compel coalition ministries, and make difficult consistent and responsible party leadership and unity.

Several causes for party subdivision in Germany may be given.[1] The lack of homogeneity in the German population prevents any large number from acting together, and forms parties on horizontal class lines rather than on vertical cleavages of differences of opinion. The intense individualism of the Germans also chafes under party subordination or discipline. Besides, it was the deliberate policy of the former government to prevent any party's growing too powerful, and party divisions were fomented and one party played against another for the purpose of strengthening the hands of the government. Governmental control of the press has limited it as an effective organ of public opinion, and has prevented the cementing of party ideas on public issues. Second elections in Germany, as in France, tend to destroy parties, since many must vote for candidates in whom they have no interest, or must abstain from voting. Finally, lack of responsibility and organization prevents strong parties. Ministers are not responsible to the parties, offices are not filled on party lines, and the loose system of organization gives no effective working machine.

There are at present about a dozen distinct parties represented in the *Reichstag*. Of these the most important are the Majority

[1] Lowell, Governments and Parties in Continental Europe, Vol. II, pp. 46–52.

Socialists, the Independent Socialists, the Christian People's Party, the National People's Party, and the German People's Party. The socialist parties control the government at present. The Christian People's Party is the Catholic group formerly known as the Center; the National People's Party is the old conservative group; and the German People's Party is the former liberal group. While party lines shift rapidly, the general tendency has been, as formerly, toward a strengthening of the two extremes, the revolutionary on the one hand, the reactionary on the other.

121. Party organization. The form of party organization depends largely on the nature and amount of work that the party must perform, and on the legal position of the party in the governing system. Broadly speaking, three main types of party organization may be distinguished:

1. *In continental Europe.* With the exception of the Socialists, and, to a degree, the Clericals, national party organization does not exist in Europe. In France electoral campaigns are carried on separately in each district, with little regard to other districts. Each candidate draws up his own platform and confines his efforts to his own constituency. Only in the Chamber of Deputies can party groups be said to exist; and, while political meetings or banquets are held from time to time, emphasis is laid on creeds and principles, not on organized machinery. Parties exist in name, held together in a sort of tacit understanding by similarity in political ideals rather than by outward association. In Germany, likewise, party organization, excepting that of the Social Democrats and the Center, is confined to clubs composed of deputies in the *Reichstag*, and within these vigorous disputes are often carried on and concerted action is by no means assured.

2. *In England.* Here the area to be covered is comparatively small, and the number of elections and of offices filled by election is not extensive. The custom of frequent reëlection and the fact that parliamentary candidates need not reside in their constituencies diminish the importance of nominations. Besides, the cabinet system, bringing the two main departments of government into harmony, removes that burden from the political parties. Accordingly a completely organized party machinery is unnecessary, and any

degree of national organization is of recent growth. In the National Liberal Federation and the National Conservative Union each party has a central organization, with headquarters in London. The leaders of each party, usually holding office in Parliament or in the cabinet, virtually dictate the policy of the party, and in their addresses or "open letters" formulate its platform. In each voting district of a parliamentary constituency local affiliations of the central organization are found. The leaders of these local units aim to control their districts and harmonize their policy with that of the national leaders. Delegates from these districts form the party council of the constituency; delegates from the constituencies form the party council of the county or borough; and delegates from these units form the national party organization in London. Ancillary organizations, which make no effort to control the policy of the parties, but give attention to promoting their interests, include the Central Offices of each party, — really sort of permanent executive committees that distribute political literature, recommend names to constituencies in search of candidates, and aid in election expenses. Numerous party clubs utilize this side of English social life to distribute party opinions. The Irish Nationalists and the Labor party have their own organizations, but as yet these have had no direct bearing upon the actual working of English party government.

3. *In the United States.* The important functions performed by the parties, together with the fact that they exist outside the legal organization of the state, have compelled them to develop in the United States a complex and highly organized machinery, centralized over the entire national area and extending its branches into the smallest local units. Each party is held together by a series of committees and conventions. In the smallest local districts a "primary" or "caucus," composed of the voters of the party in that district, selects the local committee, makes nominations for local offices, and sends delegates to the party meeting held in the next larger unit. This meeting, or "convention," chooses a committee, makes nominations for office in the district, and sends delegates to the state convention. This body, in turn, chooses members for a state committee, makes nominations for

commonwealth offices, and sends delegates to the national convention.[1] The national convention, held once in four years, wields the ultimate authority of the party. It draws up the party platform, makes nominations for president and vice president, and selects the national committee, composed of one member from each commonwealth. The national convention of each party consists of twice as many delegates from each commonwealth as it has members in Congress, together with delegates from outlying dependencies. In selecting delegates two are chosen from each congressional district and four from the commonwealth at large. In nominating presidential candidates the Republican convention requires only a majority vote, while the Democratic convention demands a two-thirds majority. In the Republican convention the delegates from a commonwealth may vote as individuals for different candidates; in the Democratic convention the entire vote of a commonwealth must be cast as a unit for the same candidate.

Most of the actual work of the parties is done by the standing committees. They fix the time and place of meeting of conventions and arrange much of the work of the convention in advance. They raise and apportion campaign funds, distribute political literature, and arrange political meetings. During the actual campaign it is their duty, aided by special campaign committees, to see that a large party vote is polled.

This system, symmetrical and centralized, was developed gradually. The original method of nominating candidates for national office was by a caucus of the party leaders in Congress. This plan broke down in 1824, and was followed by the nomination of "favorite sons" by commonwealth legislatures. Later this clumsy system was replaced by the national party convention, made possible by improvements in transportation and made desirable by growing national spirit and the theory of popular sovereignty. Since 1840 both parties have regularly held national conventions, and since the Civil War the present elaborate party machinery has been perfected. Efforts are now being made to weaken party organization and to vest more power in the people as a whole.

[1] Some delegates to the national convention are sent directly from conventions in the congressional districts.

Political parties arose as voluntary associations of individuals, uniting or disbanding at pleasure; and in most states, in spite of the important political functions that they now perform, political parties are not legally established as regular organs of government or even as corporations. Yet no social organization, performing functions of general importance, especially of a political nature, can entirely escape governmental regulation; and as parties developed they received legal recognition. "The state as a rule specifies the time, place, and manner of conducting elections, and in some of the American commonwealths even regulates the primary or caucus. It may regulate the system of nominations, fix the form of the ballot, and provide officers to supervise the polls and to count the ballots. It may even bear the expense of conducting primaries and the polls, and may legislate against corruption and bribery and limit the amount of legitimate expenses. By law it defines what persons may exercise suffrage privileges at the polls, and may also define suffrage rights at the primary. Voting has even been made compulsory in certain communities, but with small success." [1]

122. Party reform. Aside from unquestioned evils in the actual working of political parties in modern states, considerable difference of opinion exists as to the merits of the party system itself. Its opponents claim that the existence of several great organizations, within which there is substantial agreement on questions of governmental policy, is contrary to the psychology of human nature. People are not divided into a few great groups, but hold all shades and combinations of opinion. Party agreement is therefore artificial, based on prejudice rather than on sound judgment. It is further claimed that the party system is opposed to democracy, that party control suppresses those individual opinions and actions that are the very essence of free government, and that it is a device for preventing the expression of general will, obscuring public opinion, and setting up a new form of despotism. Besides, since parties grow up as extralegal organizations outside the regular machinery of the state, they tend to be irresponsible and uncontrolled, and offer opportunity for "boss rule," corruption, and misgovernment.

[1] Dealey, The Development of the State, p. 284.

To these accusations the supporters of the party system reply as follows. The existence of several large groupings of opinion is necessary, since minor differences must be subordinated to general agreement on questions of paramount importance. Moreover, such broad grouping is not artificial. People fall naturally into four groups: reactionaries, who desire to return to past methods and institutions; conservatives, who desire to maintain the *status quo;* liberals, who aim at progress through reforming existing methods and expanding existing institutions; and radicals, who would destroy present conditions and set up a new order of things. In practice the former two act together in opposition to the latter two. As examples, the two parties of Great Britain, and the distinction in the United States between the progressive, liberal-construction party and the conservative, strict-construction party are cited. Further, it is claimed that political parties are not inconsistent with democracy; that, on the contrary, they offer the only way to secure a stable and consistent popular government, and to enable the majority to express its will. Finally, political parties, in growing up outside the ordinary framework of the state, enable governmental change to take place as public opinion changes, without disturbing the whole political machinery. They thus serve as a sort of balance wheel to the constitutional system, maintaining the adjustment among the parts in the system and the relation of the system as a whole to the motive force that operates it.

It is in the United States, where parties are powerful and highly organized, that the evils of party government are most conspicuous and that reform is most needed. The causes of this condition are complex and closely interrelated, and can only be suggested here. The American system of decentralized administration and the large number of officials elected for short terms have given the parties control over the numerous unrelated officials. This has led to the spoils system, by which governmental positions are looked upon as a proper reward for party service. Civil-service reform and further centralization in administration promise to be effective remedies. It is also believed by many that fewer elected officers and longer terms, making possible a shorter and simpler ballot, would increase intelligent and active interest in elections.

The irresponsibility of the party, due to its legal position in the American constitutional system, is largely responsible for its over-organization and for the growth of the "machine" and "boss." It is, of course, evident that party organization is necessary, and that a comparatively small number of persons must control the routine of party action. Such machinery becomes dangerous only when it assumes the sole right to select candidates, prevents the real wishes of the majority of the party, and uses its powers for selfish or improper ends. The American political system makes little provision for real leadership; and the ordinary voters, little interested and unable to give time or attention to the mass of party work, leave the actual operation of party organization to that small group of "politicians" known as the "machine," at whose head often stands the "boss." Caucuses and conventions are composed of their henchmen, prearranged "slates" take the place of nominations, and, through punishment of political opponents and rewards, direct or indirect, to political followers, the unity of the party and the power of the machine are maintained.

For this feudal system in politics, efficient in controlling votes and quite natural under the conditions of American political life, numerous remedies are proposed. Legal recognition of the party, by which, through "primary election laws," all party members are guaranteed an equal voice in party management, and by which responsible party leadership may be developed, accomplishes much. The system of "direct nomination," in which nomination by party caucus is replaced by a preliminary election for the purpose of selecting candidates, receives support in some quarters. There is always the possibility that voters may shake off their lethargy and take an active interest in public affairs, or even that independent parties may be formed if the personal government of the machine grows too burdensome.

Another evil in the American system is the connection between national and local politics. While national issues differ materially from those in the commonwealths, and these in turn differ from those in cities or local districts, the national organization of the parties permeates all areas and controls all elections. The need for organization, to which purpose the local units are best adapted,

thus subordinates local issues to party unity, and local patronage is used as a reward for party service. Recent attempts to separate national and local issues have met with fair success, especially in the larger cities, and local elections have been fought out on local issues. A suggested remedy of holding national and local elections on separate days has the advantage of emphasizing the different questions at issue, but the disadvantage of increasing the number of our already numerous elections.

Probably the chief danger in American politics is the close connection with business interests, resulting in the "graft" evil. For this purpose boss rule in the party and the corporate form of business organization offer convenient points of contact. Corporations desire favorable legislation or public franchises, and wish to avoid taxation. The politicians in control of the party desire the support of corporation influence or financial contributions to the "campaign fund." Besides, the irresponsibility of party leaders and the lack of publicity concerning corporation finance offer opportunity for improper relations. Governmental regulation of political parties, so as to secure responsible leadership, and governmental regulation of corporations, so as to secure publicity concerning corporation methods, together with higher ideals of political and business morality, are needed.

In a recent book [1] emphasis is laid upon the fact that political rights, upon which chief emphasis has heretofore been laid in the United States, imply corresponding political duties; and that such rights are not private property, with which a man may do as he chooses, but that they imply public responsibilities and duties to other individuals and to the state. The essentials of that political morality upon which alone government by the people can be based with safety to national life, are stated as follows:

1. *Intelligence.* Ignorance and freedom are contradictory terms. Evils in government can be exposed or removed, and the exercise of universal suffrage made safe only when citizens are politically educated. Hence advanced states provide public education, and true citizens aim to promote rather than to prevent a general knowledge of governmental issues and methods.

[1] Woodburn, Political Parties and Party Problems in the United States, chap. xiv.

2. *Political virtue.* Moral character is the foundation of the state. "It is this that gives the citizen devotion and sacrifice for war, courage in battle, insight and boldness in leadership, and the manly independence to enable him to withstand the wiles and seductions of the corruptionist."

3. *Freedom.* Citizens must not be restrained by power, nor too much bound by party, nor controlled by private interest. This involves free speech, free assembly, free petition, and free ballot. The chief danger at present in the United States is from the powerful industrial and commercial interests, which often try to control, directly or indirectly, these free institutions, and, by preventing the economic independence of the laboring classes, make impossible real political freedom.

4. *Patriotism.* Citizens should be public-spirited and should take an active interest in political affairs. The essentials of patriotism have been summarized as follows: [1]

(a) An intelligent knowledge of what is best for one's country as a whole.

(b) The placing of the country's interest above party, class, sectional, or selfish interest.

(c) The willingness of service and of sacrifice for the welfare of one's country.

[1] James Bryce, in The Forum, Vol. XV.

OUTLINE OF CHAPTER XXII

REFERENCES

RELATION OF LOCAL TO CENTRAL GOVERNMENT

1. ACCORDING TO FUNCTION
2. ACCORDING TO GOVERNMENTAL POSITION

COMMONWEALTH GOVERNMENTS

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MUNICIPAL REFORM IN THE UNITED STATES

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   - *a.* Supported by taxation
   - *b.* Supported by fees
5. MUNICIPAL FINANCE

CHAPTER XXII

LOCAL GOVERNMENT

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123. Relation of local to central government. Ordinarily the territory of a state is so large that it must be divided for effective administration. Hence, in addition to the organs of national government, whose authority extends over the entire state, attention must be given to those governing bodies whose jurisdiction extends over only part of its area,— to their relation to the central government, their organization, and the functions that they perform. Sometimes the state creates these divisions artificially for purposes of convenient government; sometimes they are historic survivals of political units,— of independent states or local communities

whose existence antedates that of the state of which they now form a part.

The principles upon which governmental division is based are complex. Area and population, while important, are secondary to considerations of political expediency, natural influences, and past history. In most states four grades of local division are found:[1]

1. The primary divisions of a state frequently represent earlier states whose independent existence was merged into a larger whole. Such were the provinces of the Roman Empire, and such are the commonwealths of the United States, the commonwealths and free cities of the German republic, and the major divisions of Great Britain. The provinces of France were abolished during the French Revolution. These divisions enjoy considerable governmental independence, and in some states, Germany and the United States for example, have legislative bodies of their own.

2. The next divisions, while often having certain historic or geographic reasons for existence, are mainly created for governmental purposes. As examples may be mentioned the counties of England and the United States, the German *Kreise*,[2] and the French departments.

3. The next divisions, usually having corporate existence, with subordinate administration and jurisdiction, are represented by the Teutonic hundreds, the *cantons* of France, the *Kreise* of Prussia, and the townships in most parts of the United States.

4. The ultimate political divisions are rural and urban communities (*communes*, *Gemeinde*, towns, cities). Like the first divisions, these have life and interests of their own, based on social and economic conditions, and form important governmental units. Large cities sometimes include several grades of governmental division.

The functions performed by central and local governments respectively are based on a logical distinction. Some state activities affect the welfare of all citizens; some public works are national in scope, or are too expensive to be undertaken by the community most directly benefited; some regulations are effective

[1] Bluntschli, The Theory of the State, Bk. III, chap. vi.
[2] In Prussia, the *Regierungsbezirke*.

only if uniform over the entire state. Of such nature are the maintenance of national defense and the regulation of foreign affairs, the control of currency and the operation of the postal service, and the general institution of criminal and civil law. Obviously, such functions are properly performed by the national organization. Other governmental functions affect only a limited area, and it is advisable that such activities should be controlled and their cost defrayed by those who benefit by them. Of such nature are the regulation of water supplies, lighting systems, and local transportation; the maintenance of roads, bridges, hospitals, and schools; and protection against fire, disease, and disorder. Many functions, however, are of both general and local interest and their control is divided between central and local agencies. Taxation and education are examples.

While, in most cases, the division of government that should properly have charge of a given function is evident, many difficulties are met in actual administration. In the United States the commonwealths control the ordinary civil and criminal law, divorce, and the chartering of corporations. Lack of uniformity concerning these has caused many evils. In France the national government controls many activities of purely local concern, and too great uniformity results in injustice. Besides, the question as to whether national functions that must be performed in local areas should be undertaken by officials of the national government, by local officials under national direction, or by local officials under local control, opens considerable possibility of disagreement.

The chief distinction between central and local government rests upon their legal position in the constitutional system. In general it may be stated that the central government is created by the constitution and cannot be modified except by its amendment; and that the local government is created by the central government and may be changed at its pleasure. This is the case in England, where the constitution is largely unwritten, and in Italy and France, under written constitutions. Division into local areas and the organization of local government are controlled by the national legislature. However, a further distinction must be made in the case of federal states. In the United States, Germany, and

Switzerland the commonwealths are established by the constitution; and their governments, when acting within their legal powers, are independent of the central authority and may not be modified or destroyed by it. Some method of securing national supremacy and of preventing secession or disobedience on the part of the component commonwealths is usually provided. Accordingly, commonwealth governments in federal states, although local from the standpoint of the functions they perform and the areas over which they have jurisdiction, are legally fundamental parts of the national organization. Subordinate local governments in a federal state are created by the commonwealth governments, or, as in the United States, to some extent by the commonwealth constitutions. Obviously, then, the area and population of a governmental unit is no indication of its legal position. New York City, with a population of over four million, is a mere corporation, created by a commonwealth legislature; while Nevada, with a population of seventy-five thousand, is an integral part of the United States. Similarly, London is a mere creature of the British Parliament; while Lübeck, with less than one fortieth of London's population, is a self-governing German commonwealth.

124. Commonwealth governments. The commonwealth governments of federal states usually exhibit, on a smaller scale, the leading features of the national organization. This is natural, since federal states are usually formed by the union of formerly independent states, and the constitution of the new state generalizes the experience of its component units, bearing often many marks of compromise. Since the commonwealths antedate the union, and usually retain considerable local patriotism and some distrust of the new state, which is formed often by compulsion or necessity, it is also natural that their governments should retain large powers and come into close contact with the ordinary affairs of their citizens. To the federal government is delegated control over foreign affairs and over internal interests of general nature; although, as time emphasizes the advantages of union and dims the remembrance of former independence, the commonwealths sink more and more into a subordinate position in the constitutional system.

The legal position and governmental organization of commonwealths in leading modern federations may be outlined as follows:

1. *Switzerland.* The cantons of Switzerland have had their own separate histories; they exhibit marked differences in race, language, and religion; they have been brought into union only under great difficulties. As a result considerable variety of organization is found, yet, in essential features, their governments are similar. Each canton has a legislative body composed of a single House. In a few of the smaller cantons this is a general assembly of all qualified voters; in the remainder it is a representative council chosen by direct popular vote. This body, in addition to its legislative powers, also supervises the administration and gives unity to all governmental functions. The executive in each canton is collegiate, consisting usually of five to seven members. These are chosen either by direct popular vote or by the legislature; and they take part in legislation as well as in administration, acting as a guiding committee of the lawmaking body. In addition, the people of each canton retain a direct and positive control over the government, the initiative, referendum, and popular veto being used for both ordinary legislation and constitutional amendment.

2. *Germany.* The former German Empire was a federal state composed of four kingdoms, six grand duchies, five duchies, seven principalities, three free cities, and the imperial domain of Alsace-Lorraine. The king of Prussia was German emperor, and the influence of Prussia dominated the federation. As a result of the World War, Alsace-Lorraine was ceded to France, and sections of boundary territory were transferred to Denmark, Belgium, Poland, Lithuania, and Czechoslovakia. Besides, a number of the smaller commonwealths combined into larger units, notably the seven Thuringian duchies and principalities, which formed themselves into a single commonwealth in 1919. The present republic is composed of eighteen members, including the three free cities of Hamburg, Lübeck, and Bremen. The former hereditary dynasties have been removed and republics proclaimed in every unit. In each, chief authority is vested in a popularly elected representative legislature, usually of a single house, although Prussia adds an upper house, or State Council, similar to the *Reichsrat* of the national government.

The three free cities each have a Senate, consisting of fourteen to eighteen members elected for life, which exercises executive power; and a House of Burgesses, numbering one hundred and twenty to one hundred and sixty members elected for six years, which shares in legislative power. Burgomasters, chosen for short terms, preside over the Senates and direct the administrations.

The new republic is a more unitary state than the former federal empire. The national government may create new commonwealths, change commonwealth boundaries, enforce national laws that conflict with commonwealth laws, and use arms to force commonwealths to perform national duties. The power of the national government in taxation has been largely extended. It also has exclusive jurisdiction over foreign relations, colonial affairs, citizenship, immigration, naturalization, extradition, national defense, coinage, customs, postal service, telegraphs, and telephones.

3. *The United States.* The governments of the forty-eight commonwealths reproduce on a smaller scale the national government of the United States. Each has its written constitution, although the detailed legislation which many of them contain is in striking contrast to the brevity of the federal Constitution. Each commonwealth has an executive head, or governor, and a legislative body of two houses. All of these are elected by direct popular vote for brief terms. The administrative departments are not centralized under the control of the governor, but are distributed among elected and appointed officials, together with numerous boards and commissions. Administration, therefore, is neither harmonized by common subordination to a single executive head, as in the national government of the United States, nor made responsible to the majority of the legislative body, as in the parliamentary governments of England and France. Each commonwealth has also a complete system of courts, whose organization, unregulated by federal law, is not entirely uniform. In most commonwealths judges are elected by popular vote for comparatively short terms.

In contrast to the German commonwealths, whose powers may be narrowed by the national legislature, the commonwealths of the United States retain large and independent functions, guaranteed by the federal Constitution. Though losing ground relatively to the

growing national spirit, the commonwealths, controlling the ordinary civil and criminal law and performing many functions for general welfare, come into contact with the lives of the majority of citizens at many points.

125. Rural local government. Rural local government is distinguished, on the one hand, from national government or, in federal states, from commonwealth government; and, on the other, from municipal government, which is the organization of urban political units. In two respects rural government, as it exists in modern states, shows striking variations:

1. *As to local areas.* Sometimes local governmental districts represent original units of settlement, whose existence antedates that of the national government; sometimes they are created artificially by order of the central authority. The towns of New England, the French communes, and the English parishes are examples of the former; the counties and townships of the newer American commonwealths and the departments of France illustrate the latter. Accordingly the units of local government, even of the same governmental rank, differ greatly in size and in population. Sometimes new divisions of local government are made by dividing or combining the old; sometimes new areas are created for new needs, regardless of the boundaries of other local divisions. Hence the regular multiple system of division, which prevails in the United States and France, by which minor governmental areas are always subdivisions of larger units, with no overlapping of boundary lines, is in striking contrast to the irregular local divisions of England, where new areas have been created as new functions of administration demanded, and, until recently, boundary lines intersected and overlapped in a most confusing way.

2. *As to local organization and relation to central government.* The general nature of the relation of local to central organs has already been outlined.[1] Functions of local interest may be administered by local officials or by agents of the central government. The control exercised by the superior government over local interests may be extensive or limited, and may be carried on through legislation or through administration. Broadly considered, two

[1] See section 99.

main types of local organization may be distinguished. The first is that of decentralization, or, as it is commonly known, local self-government. In this system the citizens of local areas are given a free hand in administering questions of local concern through elected officials responsible only to voters of the locality. This type of local government exists in the United States and, in a less complete form, in England. The other system is that of centralization, in which local interests are regulated by the central government through officials that it appoints or controls. This type of local government exists in France and, with modifications, in the German republic.

A brief statement of the organization and governmental functions of rural local units in leading modern states follows:

1. *France.* For purposes of local administration France is divided into departments; departments are divided into *arrondissements;* these are subdivided into cantons; and at the basis of the system are the communes. This is a simple and symmetrical multiple system of subdivision except for the communes, which, in a few instances, as in the case of Paris, are populous enough to contain several of the larger divisions. The communes alone are historic local units, the remainder being artificial administrative areas created by the Constituent Assembly in 1789.

The characteristic feature of local government in France is its highly centralized form. Local officials are dependent upon the central authority; agents of the national government are found in all local areas; and the discretionary powers delegated to local administration are few. This system rests on a deeply rooted French tradition dating back to the old régime. The Revolution at first extended self-government to local areas, but the necessity of maintaining internal order and of waging foreign war led to a reaction under Napoleon, and the organization then established has undergone but few changes. The French habit of depending upon the central government, their dread of disorder, the artificial nature of the local divisions, and the fear on the part of the existing government lest local units serve as centers of revolt, — all prevent any considerable extension of local self-government.[1]

[1] Lowell, Governments and Parties in Continental Europe, Vol. I, pp. 35–36.

There are eighty-six departments in France,[1] comparatively equal in area and population. At the head of each is a prefect, appointed by the president on the recommendation of the Minister of the Interior. This official occupies a double position. He is the agent of the central government for affairs of general admininistration, acting sometimes under orders from the ministers, sometimes on his own responsibility. As such he is assisted by a prefectorial council whose duties are mainly advisory. He is also the executive officer for local affairs, and as such carries out the resolutions of the General Council, the elected assembly of the department. The authority of this body is limited to purely local affairs, and even over these its control is not absolute. Its resolutions are carried out by the prefect, primarily an agent of the central government, whose powers of appointment and independent authority, especially over finance, give him considerable control over its acts. In addition, the council is permitted to sit only a short time and may be dissolved by the president of the republic.

The *arrondissements* and cantons are mainly convenient administrative districts. The former, governed by a subprefect and an elected council, are electoral districts for the Chamber of Deputies. They have no corporate existence and no property or revenues of their own. The latter, with no organization of their own, are districts for judicial, military, and electoral purposes.

The communes, some of which are urban but the majority rural, are vital local organisms. They vary in population from mere hamlets to large cities, and in area from a few acres to several hundred square miles. Except for Paris and Lyons they are governed on the same plan. Municipal councils, composed of ten to thirty-six members, are elected in each commune, with authority over local affairs. Many of their acts must be approved, however, by superior administrative officials. From among its own members each council elects a mayor, who is both the executive head of the commune and the agent of the central government. In the latter capacity he acts under the orders of the prefect.

2. *Germany*. Since local organization is not uniform in all the

[1] Eighty-seven, if the territory of Belfort be included. The three departments of Algeria are also treated as part of France proper.

commonwealths, that of Prussia will be considered typical. There the mingling of historic units and artificially created areas makes local organization somewhat confusing, although several basic principles may be observed.

(a) Matters affecting the entire country, forming a part of general administration, are distinguished from those of purely local concern. To the former class belong police, religion, schools, and administrative supervision; to the latter, roads, charitable institutions, and local appropriations. In some local districts separate organs exist for the administration of these functions; in others the same organ controls both, subject to central supervision concerning matters of general interest.

(b) A distinction is made between the trained officials of the administrative or judicial service and the nonprofessional officials chosen from the people at large. The former receive salaries, are constantly in office, and form part of the governmental bureaucracy. The latter are unpaid, although their service is usually compulsory.

The areas of local government in Prussia are provinces, government districts (*Regierungsbezirke*), circles (*Kreise*), and rural and urban communes. In the provinces there are separate organs for state and for local administration. A superior president (*Oberpräsident*), chosen by election, represents the central government. He is assisted by a provincial council, whose assent is necessary to his ordinances. The jurisdiction of these officials extends over all interests affecting the republic or Prussia, and over the general affairs of the entire province. In most cases they act through the officials of subordinate districts. The local interests of the province are directed by a provincial assembly elected by the diets of the circles, and by a provincial committee and a chief executive (*Landesdirector*), chosen by the assembly.

The government districts have no organs of self-government. They are divisions of state administration, and their officials, called collectively the administration (*Regierung*), are professional officials chosen by election. They act usually in the form of boards under the direction of the national ministers. The president of the administration (*Regierungspräsident*) is the most important local official and possesses extensive ordinance and veto powers.

Some supervisory powers are exercised by the people of the district through a district committee, composed in the main of nonprofessional members.

In the circles the distinction between general and local interests remains, but both functions are performed by the same organization. Administration is in the hands of a professional officer (*Landrath*) appointed by the superior president of the province, usually on nomination of the diet of the circle. This official is assisted by a circle committee, composed of six additional members chosen by the circle diet. The diet represents groups of interests within the circle, representation being divided between town and country, and in the latter between rural communes and the great landowners.

The government of the rural communes is carried on by small representative assemblies, now chosen by a limited popular suffrage; or, in the smallest communes, by direct assemblies. An executive officer, known by various titles, is also found. There remain in Prussia, as a survival of feudalism, a number of manors, which form separate communes. In these administration was until recently in the hands of the lord of the manor. With the fall of the imperial system democratic local control was set up.

3. *England.* England's early local organization was fairly simple and uniform. The primary divisions were shires (counties), subdivided into hundreds (wapentakes or rapes), and these again subdivided into townships (vills). Of these the county became the most important. The kings exerted their growing powers through the county courts and the sheriffs, and later through the justices of the peace, created by royal authority. As the needs of local government increased, the powers of the justices of the peace expanded until the entire administrative and judicial government of the county was placed in their hands; local government thus being controlled by aristocratic landowners nominated by the central government. The hundreds diminished in importance until they practically disappeared; and the townships, almost absorbed during feudal times into the manor, might have suffered a similar fate had not the church, establishing its parishes in the main on township lines, given them a new vitality. Within the

parish a general assembly, known as the vestry, offset the aristocratic organization of the county. In addition to this system of rural organization, boroughs developed, whose boundaries often cut across those of the other local areas. Control over borough affairs was divided among their own officials, acting under a charter from the crown, and the justices of the peace and parish vestries within whose jurisdiction the boroughs lay.

After the Reform Act of 1832 this system of local organization was modified by a series of statutes. As new needs in local government came to the attention of Parliament new areas and officials were created, regardless of former division, until the confusion of jurisdictions and boundaries made any attempt at classification impossible. Unions for the relief of the poor, highway and burial districts, sanitary districts, school districts, and numerous other areas, with boundaries overlapping, with diverse forms of organization, and with each independent of any other authority, were established.

Beginning with the Public Health acts of 1872 and 1875, which divided the country into urban and rural sanitary districts, efforts were made to avoid the creation of additional areas; and more recent Local Government acts (1888, 1894) have simplified the areas and extended local self-government through elected councils, restricting the justices of the peace, in the main, to the exercise of judicial functions. The present local divisions are therefore again somewhat uniform. The main divisions of England and Wales are sixty-two administrative counties, each of which is governed by a council composed of popularly elected representatives, together with a prescribed number of aldermen chosen by the council either from its own number or from outside. The councilmen serve for three years and the aldermen for six, but they meet and act as a single body. The crown is represented in each county by a lord lieutenant, who nominates the justices of the peace, to be appointed by the lord chancellor. There are also a sheriff, undersheriff, clerk of the peace, coroners, and other officers. Counties are divided into districts, each of which is governed by an elected representative council; and the districts are divided into parishes, those with more than three hundred

inhabitants having elected councils, and the remainder acting through direct assemblies. Except for London, whose organization is exceptional, the cities are county boroughs or urban districts, governed like the rural units of the same degree.

Since the passage of the Education Act of 1902, which abolished the school districts and placed the functions of the school boards in the hands of the ordinary councils, the only important remaining cross divisions are the Poor Law unions, and in the rural parts of the country even their functions are exercised by members of the local district council. There still remain, however, numerous local peculiarities, and the size and population of districts of the same order show wide divergences.

4. *The United States.* The general organization of local government in the United States shows three distinct types, determined originally by historic conditions of colonial settlement:

(a) The town system. In New England, where each settlement was a compact, isolated congregation, held together by purposes of religion, defense, and trade, a general assembly, or "town meeting," chose local officers and made rules of government. This township, or "town," remains the vital unit of local government in New England; and, except where population has become dense and municipal government is established, town meetings, held annually, elect local officials, regulate taxation and expenditures, and decide questions of local policy. The officers of the town are selectmen, three to nine in number, who act as the executive committee of the town meeting, together with a town clerk, treasurer, assessor, tax collector, a school committee, and minor officials.

The original town system has been modified somewhat by the grouping of towns into counties, at first for judicial purposes, later for other convenient administrative functions, such as the equalization of taxes, the maintenance of roads, county buildings, etc.; and by the growth of large cities, whose complex interests demand a more highly organized form of administration. The influx of foreigners has also impaired the town system in some places.

Wherever New England settlers migrated they established the town system; and, since movement of population in the United

States has followed climatic lines, the town reappears in the northern tier of commonwealths. In the new commonwealths, however, the town has been artificially organized and the town meeting is absent. The township in the West consists of a regular tract of land containing thirty-six square miles, and was established as a convenient means of school administration, one square mile in each township being reserved for the endowment of schools. The county in the West usually preceded the township and is more closely integrated with it than is the case in New England.

(b) The county system. The southern colonies were settled by the gradual expansion of a scattered agricultural population. Hence counties, sort of rude imitations of English shires, were the historic units, established originally for judicial purposes and later made the areas for most local administrative functions. Although the original counties were controlled by the aristocratic planters, county officers at present are usually elected by popular vote, and consist, on the administrative side, of a board of commissioners, which has under it a treasurer, an auditor, and superintendents of education, roads, and the poor. On the judicial side the county has a sheriff, clerk, coroner, attorney, and minor officers.

Where local taxation for schools has been established the southern counties have been subdivided into townships, but these are as yet of little importance. In the southwestern commonwealths the county forms a natural basis of government for the widespread agricultural population, although its boundaries are more artificial and it shares more functions with its townships than is the case in the South Atlantic commonwealths.

(c) The mixed system. In the Middle Atlantic commonwealths and in the greater number of Western commonwealths a combination of county and township is found. Sometimes the one, sometimes the other, was first established and predominates. In general, functions are divided between them according to the nature of the function, and both are governed by elected officials. All sections of the country, especially the newer commonwealths, show a general tendency to combine the advantages of township and county and to approach this type of local organization.

In addition to county and township there exist in the United

States school districts, sometimes as separate areas with separate officials, but often coincident with the townships. Urban areas, such as villages, boroughs, and cities, have separate organizations.

"The large freedom of action and broad scope of function given to local authorities is the distinguishing characteristic of the American system of government." [1] Acting under general statutes, local units are left practically free to administer local affairs, and their jurisdiction covers wide and varied interests. The principle of separation of powers, so carefully applied to the national and commonwealth governments of the United States, is not extended to the local areas. Outside of the incorporated urban units there is a general absence of representative lawmaking bodies, and even where such bodies exist their powers are narrow, limited by elaborate constitutional or statute restrictions. On the other hand, local officials and boards exercise extensive executive powers, subject to little restriction on the part of any superior authority. In administration local government is the most vital part of our system, and its importance, relative to that of the commonwealths, is constantly increasing.

126. Historical development of cities. Concentration of population is a primary requisite to advancing civilization. A highly developed economic life, with that division of labor that makes possible effective production, and that leisure that gives opportunity for intellectual progress, is possible only where population is numerous and closely aggregated. Contact of man with man stimulates mental advance and establishes social customs and standards. Permanent abodes and constant social intercourse strengthen the idea of territorial attachment that underlies patriotism. And the need for order and regulation, caused by complex personal relations and accumulating property, necessitates better organization and more extensive authority. Ideals and institutions developed under the conditions of active city life gradually spread, through imitation or compulsion, until their influence reaches all places and all classes. Modern political ideas, existing standards of civilization, and the present advanced system of economic life grew out of conditions requiring compact urban units.

[1] Wilson, The State, p. 506.

Each civilization as it arises centers in its cities, and their governmental organization and activities, both as distinct units of civic life and as component parts of larger political areas, cover an important field in political science. In Egypt, Memphis and Thebes were the centers of political life. Oriental history is the story of the great palace cities of Assyria, Babylonia, and Persia. With the development of trade routes Damascus began its important career; and later the Phœnician ports, Tyre and Sidon, came into prominence, extending their commerce and establishing trading colonies along the shores of the Mediterranean.

Among the Greeks the city represented the perfection of political life. Athens, Sparta, Corinth, and many others were independent communities with large spheres of public activity, making no distinction between functions that are now considered national and those more specifically municipal. Even the Greek colonies in Asia Minor, Sicily, and southern Italy were not dependent trading posts, but vigorous, self-governing political units. Under Alexander many new cities were founded, of which Alexandria and Antioch were the most important; and as the independence of the cities was subordinated to the more comprehensive organization of the empire, local government and municipal activities were given opportunity to expand.

The Roman Empire was formed by the foundation and conquest of many cities. Rome, starting as a city state, extended her sway by alliance and conquest over surrounding cities, and these were gradually placed on a common basis as municipal towns, with Roman citizenship extended to all their inhabitants. The legal position of the Roman municipality closely resembled that of a modern city. It was created by and subordinated to the state, it retained the administration of law and government in local affairs; and it had the legal and property rights of a person. In the Roman world city life predominated. Ancient Italy is said to have had twelve hundred cities, and the population of Rome at its height has been estimated at from one to two millions, — a figure not again reached until the eighteenth century. In these cities modern problems of government and administration existed, and numerous activities for public safety and general welfare were maintained.

The fall of the Roman Empire almost ruined the cities of western Europe. Decline in commerce and manufactures destroyed their economic basis; a diminished population, whose freedom of movement was restricted because of the absence of a strong central governing authority, clustered in small, self-supporting rural communities; and new villages grew up but slowly around feudal castles or specially protected market places. In the East and in the Mohammedan world city life survived and flourished, but the remaining western cities, whose administration had generally fallen under ecclesiastical control, retained but few traces of their former vigorous and extensive municipal life.

Reviving commerce, hastened by the contact of East and West in the crusades, gave, especially in Italy, a new impetus to city life about the twelfth century. Pisa, Genoa, and Venice, several seaports in France and Spain, and the free cities of Germany took the lead in this revival of urban communities. In the absence of strong central authorities many of these cities secured positions independent of the prevailing feudal system, and with their merchants and artisans organized into guilds, maintained themselves as self-governing units. Their interests were, however, primarily economic rather than political; their chief activities were regulations concerning trade and industry; and their main contests aimed to secure economic privileges or to crush commercial rivals. Political and civil rights and national spirit were as yet undeveloped.

Toward the close of the Middle Ages, as national states arose, cities in most parts of Europe were subordinated to larger political units. Economic affairs were controlled by the central authority, and local governing powers were granted, usually in the form of a charter from the king, to a small group within the city. The breaking down of the guild system, the growth of "domestic" manufactures in the rural districts, and the constant wars throughout Europe destroyed the importance of many cities. At the same time the closing of the old trade routes to the East, and the discovery of America and the new sea passage to the Indies, led to a general recasting of trade routes and of urban centers. Seville and Cadiz in Spain, Lisbon in Portugal, and later the cities of the Netherlands came into prominence. City life in Germany revived,

and even in England fair-sized towns were found. London and Paris, the seats of national government, gained with the centralization of royal power, and were by far the most important cities in their respective states, and the most populous capitals in Europe.

The present concentration of population into cities is largely the work of the past century, especially of its latter half. In 1800 only 21 per cent of the population of England and Wales lived in cities of over 10,000; at present more than half the population of the entire British Isles lives in cities twice as large. In Prussia the proportion of population living in cities of over 100,000 increased during the years 1816–1900 from 1.8 per cent to 12.9 per cent. In 1801 only 2.8 per cent of the population of France lived in cities of 100,000 or over; in 1900 the proportion had increased to 13 per cent. In the former year 9.5 per cent, in the latter year 27 per cent, lived in cities of 10,000 or over. In 1800 there was no city in the United States with a population of 100,000. At present 20 per cent of our population lives in cities of that size or over, and almost one third of our population lives in cities having a population of at least 10,000.[1] While these modern cities are in all cases subordinated to the authority of the state, questions of municipal government and municipal functions have again become important in the political life of the times.

Among the causes of the recent rapid increase in urban population are:

1. Improved sanitary conditions, by which cities formerly dependent upon immigration from rural districts to maintain their population, have now also a large excess of births over deaths.

2. The development of transportation, by which markets have been widened, wants increased, and the maintenance of a large population at a distance from food supplies made possible.

3. The use of machinery and artificial power, by which division of labor has been carried to a high degree of perfection and production organized on a large scale.

4. The development of secondary pursuits, such as banking, insurance, brokerage, retailing, etc., dependent upon the extension

[1] Fairlie, Municipal Administration, pp. 121–122.

of industry and trade; and of personal or professional services, amusements, etc., dependent upon the patronage of a large population.

5. The extension of governing authority and activities, by which political centers, even in the absence of manufactures and trade, may become important cities.

127. Municipal government. The city has occupied three fairly distinct positions in political society:[1]

1. *As city state.* At first the city was an independent unit, or city state, whose inhabitants were united by ties of kinship and religion, and whose functions included the regulation of interests now considered national as well as those of local concern. Such were the cities of Greece and Rome; and about the tenth century similar independent municipalities arose in Italy, Germany, and France. These medieval cities, however, were not based on common kinship and religion, but resulted from reviving trade and commerce. Hence self-government was desired so that business could be transacted without the burdensome restrictions of feudal custom and law; and aid was often secured from the kings, who desired to weaken the feudal nobility. With a few exceptions, however, complete independence of the overlordship of emperor or king was seldom claimed.

2. *As administrative district.* Just as the growing centralization of the Roman Empire reduced its independent cities to subordinate positions in the state, so the rise of national monarchies toward the close of the Middle Ages subjected the medieval cities to national control. The widening of social and economic interests made many matters, originally of local concern, national in scope; and local control was replaced by regulation at the hands of the growing national organization. In addition, city populations preferred the uniformity and justice of national regulation to the selfish administration of the corrupt oligarchies into whose hands city government had fallen. Accordingly the city appeared in government as an administrative district, subordinated to the central authority of the state, and differing in few essential ways from the other administrative districts into which the state was divided.

[1] Goodnow, Municipal Government, chaps. iv–vii.

3. *As local government.* The Industrial Revolution and the improvements in transportation that characterized the latter part of the eighteenth and the early part of the nineteenth century concentrated population in large cities, compelled these cities to widen the scope of their functions, and created many new municipal problems. Accordingly the city, while remaining subordinate to the state, and acting as its agent in most affairs of general administration, has also been recognized as a unit for the satisfaction of local needs, and has been given the organization and powers necessary for this new position. Modern cities are usually municipal corporations, created under charters issued by the state, which determines, either by its constitutional law or by legislative statute, the scope of municipal authority and the degree of national supervision and control.

In determining the relations between city and state two general systems are in use. In England and the United States the powers that city governments may exercise are enumerated in detail and strictly construed. Accordingly the presumption is against the exercise by the city of any power unless specifically granted, and frequent application must be made to the legislature for additional powers desired. This system has led to the granting of many special charters, to frequent legislative interference, and to control through legislation rather than through administration. The present tendency in these states is to incorporate cities under general, uniform acts, and to widen the scope of their local authority. On the continent cities are granted wide general powers, the presumption being that municipal authorities may exercise all powers not specifically forbidden. In addition, cities are incorporated under general acts applying to all cities and laying down general principles of organization and function. The control of the central government is accordingly exercised through administration rather than through legislation.

The internal organization of municipal government may be viewed under the following heads:[1]

1. *The share of the people in city government.* This depends upon the extent of municipal suffrage, the number of elected

[1] Goodnow, Municipal Government, chaps. ix–xi.

officials, and the degree of authority exercised by the people through direct legislation or through control of officials previously selected.

(a) Municipal suffrage. States such as the United States, France, and Italy, that have adopted the general principle of manhood suffrage, apply this principle to city elections also, although educational qualifications in Italy exclude many from voting. France and Italy permit persons who pay direct taxes in a city, but reside elsewhere, to vote in the city instead of at their places of residence. England and Germany, where property was formerly important in determining suffrage rights, either demand a property qualification for voting or give greater voting power to the larger property holders. All states require a certain period of residence, or, in case the vote goes with property, the payment of taxes for a certain period before voting. The length of residence demanded is shortest in the United States. In general the proportion of voters is greatest in American cities, in spite of the fact that their heterogeneous population, many of whom have no permanent interest in the city and are unable to vote intelligently, makes universal suffrage a questionable policy.

(b) Elective officers. In this respect the United States differs from most other countries. In European cities members of the council only are elected, all other officials being appointed. Even in England only a few minor officials, in addition to the councils, are chosen by popular vote. In cities of the United States, however, long lists of officials are chosen by election. This principle was introduced about the middle of the last century as a reaction against the evils of the spoils system, although in practice it made no improvement. The difficulty of knowing the merits of candidates in large cities and the uncertainty of securing the expert knowledge needed in the complex administration of city government are objections to popular election. Besides, party control through numerous elected officers is no less than under the appointive system. As a result, a strong reaction toward centralization and appointment is manifest in American cities. In addition, efforts are being made to weaken party control by regulating nominations to city offices. Among the proposed methods are

"nomination by petition" and "direct nomination." Legal regulation of political parties, or, if possible, the formation of independent parties on municipal issues also tends to diminish present evils in American cities.

(c) Direct popular government. Municipal voters may sometimes act directly through the initiative and referendum, or may exercise a control over elected officers by means of the recall.[1] In most states, where city councils are fairly satisfactory governing bodies, little use of these devices in municipal government is made, although Italy requires the referendum in a few specified cases. In the cities of the United States many questions are referred to popular vote, partly because of the democratic idea that affairs of local concern should be decided by popular vote, and partly because of the failure of city councils to govern satisfactorily.

2. *The city council.* In all important states city councils are elective. In France, Italy, England, and Germany council members are usually elected on a general ticket, although provision is made for minority representation. In the United States the district system prevails. In France, and generally in the United States, all council members are elected at the same time; in England, Germany, and Italy partial renewal is the rule. The term varies from an average of two years in the United States to six years in Germany. In size no uniformity exists, council membership ranging all the way from less than a score to several hundreds. In general, the type of men chosen for city councils is superior in England and Germany to that in France and the United States.

From the standpoint of relative importance councils differ widely, being strongest in England and weakest in the United States:

(a) In England the council is the organic authority of the municipal system. It determines the government of the boroughs, appoints and directs all officials, and exercises all powers permitted by the central government. While much of its work is divided among committees, the council is the final authority, and all administrative officers are merely agents to carry out its policy in detail.

[1] See section 92.

(b) On the continent provision is made for an executive with certain powers independent of the council. The executive officials are, however, chosen by the council and many council members serve on administrative boards. Council and executive each share in the functions of the other, legislative and administrative powers being closely coördinated.

(c) In the United States the council does not choose the mayor or heads of departments. Besides, the detailed municipal legislation enacted by commonwealth legislatures and the limits placed upon the financial powers of city councils further diminish the scope of their activity. As a result the council is excluded from executive and much limited even in its legislative activity.

Previous to 1830 the council was supreme in the United States as in England, but dissatisfaction with conditions of city government led to a weakening of the council, to a distribution of administrative powers among many boards and officials, variously chosen, and to greater interference on the part of commonwealth legislatures. The resultant loss of self-government has led to recent tendencies toward strengthening the council, centralizing the administration, and increasing local autonomy.

3. *The city executive.* As already indicated, all states except England recognize in city affairs a certain separation between legislation and administration, and intrust the latter to more or less independent organs, the United States carrying this separation furthest. In fact, except in England, the executive is the dominating factor in municipal organization. The executive authority is usually vested in a single head, or mayor, but sometimes, for instance in Germany, in an executive board. In Germany and the United States the executive is especially strong, having a veto over all acts of the council and a practically independent tenure. In England, France, and Italy the executive is weakened by the fact that only council members are eligible for election as mayor, and by the absence of a veto power. Even in these states, however, the councils are largely guided by the mayors they have chosen.

The relation of the mayor to subordinate officials differs. In England the council appoints, removes, and directs municipal officials. In Germany this function is exercised by the executive.

In France and Italy the council elects the heads of departments and the mayor assigns to them their duties and directs their actions. In the United States the mayor must often secure the consent of the council to his appointments, and in some cities heads of departments are elected by the people. In the subordinate civil service Germany emphasizes administrative efficiency through permanent tenure, while the United States aims at popular control through short terms and frequent changes. In general, the cities of England and the continent, whose city government is largely in the hands of a permanent, professional class, secure more efficient, honest, and public-spirited administration than is the case in the United States, where most city offices are filled as rewards for political services.

128. Municipal reform in the United States. Problems of city government are especially pressing in the United States. Municipal growth began at the time when public interest centered around national questions, such as the share of the people in government, the relation of the commonwealths to the Union, and the extension or abolition of slavery. Accordingly little attention was given to the new phenomena of city life until after these pressing national questions had been settled, and by that time the early municipal organization was badly outgrown. Besides, political parties, created by these questions and by the necessity of harmonizing the extensive separation and division of powers in our constitutional system, built up their organization by means of the spoils system, in which the numerous city offices became rewards for partisan service. Consequently local issues were subordinated to the needs of national political organization, and municipal life again suffered. Still later the growth of corporate interests, coupled with the fact that the major part of city government has to do with business administration and with the expenditure of money, led to the close connection between business and politics that underlies the "graft" evil. These conditions are not improved by the extremely cosmopolitan character of city populations in the United States.

Since 1870 considerable attention has been given to municipal reform, and various plans of organization have been suggested and given practical application. There is also a growing realization

of the value of a permanent and expert civil service, and a more intelligent public opinion on issues of municipal concern. The municipal program, drawn up by a committee of the National Municipal League, urges local charter legislation and grants of general powers to cities, so that the constant interference of commonwealth legislatures may be abolished. It also urges the separation of local and national politics, improvements in electoral methods, and restrictions on political patronage. Administrative responsibility is centered in a popularly elected mayor who has extensive powers of appointment and removal; while, subject to the mayor's veto, an elected council, of a single Chamber, exercises all legislative powers conferred upon the city.

Considerable difference of opinion exists as to the proper position of council and mayor in American cities. Some authorities would increase the powers of the council on the ground that the distinction between local legislation and local administration is fundamental, that increased powers and responsibility would improve the caliber of men chosen to city councils, and that an elected council, having broad knowledge and representing different interests, most accurately represents the people. Others prefer the greater concentration of responsibility and the more effective administration secured by centralizing authority under the mayor.

A more recent development in municipal government is the commission plan, by which entire control is vested in a small board, chosen at large by popular election. In the Newport plan the commission, which controls administration and appointments, is combined with a large council, which controls ordinances and appropriations. The Galveston plan vests administrative, appointing, finance, and ordinance powers in a commission of five men, elected at large and acting in a body. The Des Moines plan adds the initiative, referendum, and recall.

Commission government has the advantages of concentrating authority and responsibility, thus securing a businesslike administration, of giving the voters something definite to vote for, of securing a better type of man than under numerous decentralized authorities, and of avoiding the deadlocks formerly frequent. At the same time there is danger of extravagance, since powers of

raising and spending money are given to the same persons; and partisan spirit may be increased, since the conflict centers on the election of a few all-powerful officials. Besides, there is no guarantee that experts in municipal affairs will be elected; and, since the commission deals mainly with administration, and since there is in the United States a deep-rooted dislike of intrusting lawmaking powers to a small body of men, the danger of legislative interference is increased.

129. Municipal activities. The functions discharged by city governments differ materially from those performed by other political divisions. In contrast to the broad questions of foreign affairs or of general internal policy with which national governments deal, or to the regulation of the ordinary relations of persons and property with which rural local areas are concerned, city problems are, in the main, matters of business administration or of complex social adjustment. The character of city populations, and the physical, intellectual, and moral conditions of the artificial environment in which they live, necessitate unique forms of governmental organization and the performance of special services.

As already seen, cities occupy a double position. They serve as agents of the state government and as organizations for the satisfaction of local needs. In the latter capacity their functions are limited to internal affairs, and even in this field their control over judicial and financial matters is limited. Besides, the final determination of proper functions for state and for city lies in the hands of the state, which may at any time extend or limit the functions that the city, either as a local unit or as an agent for the central government, may perform. In general, England and the United States emphasize the point of view of the state, limiting the city to such functions only as are definitely granted and enumerated in detail by the state. On the continent the presumption favors the city, which has power to do anything not definitely forbidden to it or not intrusted to some other governmental authority. The former independent city life and the long absence of centralized government on the continent account for this attitude.

Moreover, the peculiar geographical or social conditions of each city offer special problems and make a comprehensive statement

of municipal activities impossible. Local conditions determine whether certain duties shall be undertaken by the city or by the state, and whether certain functions may be best performed by private initiative or by public control; and changing conditions may widen or narrow the scope of municipal activity, as compared with both state authority and private enterprise. At the same time a general classification of municipal activities may be made, grouped roughly under the following heads:

1. *Public health and safety.* The concentration of population in large cities and the circumstances of city life necessitate extensive precautions for the maintenance of public peace and order and for the safeguarding of life and health. An organized and disciplined police force for the preservation of order and for the prevention and detection of crime, and special judicial machinery for dealing summarily with minor cases, form an important part of this side of municipal administration. Another extensive organization serves as a protection against fire, and precautions against disease are taken by inspection of food and water, prevention of unsanitary conditions, and quarantine of infectious diseases. The remarkable recent advance of medical and sanitary science is shown by the vital statistics now recorded in many cities. Building regulations aim at protection against fire, stability of construction, sanitary conditions, and æsthetic effects.

2. *Charities and correction.* In caring for the poor and the defective private enterprise supplements municipal effort, and in the administration of prisons the central authorities have taken over a large share of control. However, an important phase of municipal activity deals with public charity and with the maintenance of hospitals, asylums, and correctional institutions. In addition, European cities in particular have developed employment bureaus, public loan offices, and savings banks.

3. *Education.* Public education, especially of elementary and secondary grade, is largely controlled by the municipality, although here again private initiative enters and a tendency toward control by the central authorities is manifest. Cities also maintain public libraries, museums of art and science, and, on the continent, municipal theaters and opera houses.

4. *Municipal improvements.* This side of municipal activity deals with works of municipal engineering and is most important in large cities. Such functions, most of which are concerned with city property open for public use, may be divided into two groups:

(a) Those supported mainly by public taxation. Under this head belong public baths, parks, and playgrounds, the construction and maintenance of streets, bridges, and sewer systems, and the removal and disposal of waste materials. An important aspect of this group is city planning, either for the purpose of providing for future growth or to remedy undesirable conditions in congested areas.

(b) Those maintained by charges for services rendered. Under this head come the supply of water, gas, and electric light; markets, docks, and harbors; and local transportation. In these activities, all of which are natural monopolies, private companies as well as municipalities are engaged, and the individuals directly benefited bear the major part of the expense. At the same time the functions performed are of a public nature and the material equipment required makes use of the public streets. Accordingly the question arises whether cheap and efficient service is best secured through private concerns, operating under a franchise granted by public authority, or through municipal ownership and operation. In case of the former the proper terms of the franchise and the extent of government regulation still demand solution. Originally most of these matters were in private hands, but the improvement of governmental organization during the last century, together with the demand for excessive profits and the disregard of public health and convenience manifested under private management, has extended the field of municipal operation. In Europe, where fairly satisfactory systems of city government have been worked out, municipal ownership is most extensive. Even in the United States this sphere of city activity is expanding.

The proper adjustment between municipal government and these public utilities is one of the most important problems of the day. Because of the inherently monopolistic character of such industries, the dependence of the public upon the services which they perform, and the fact that with them competition is destructive rather than regulative and results in unjust discriminations,

necessitates a relation to public authority essentially different from that which governs ordinary business interests.[1] Besides, these industries cannot be carried on without the grant of some public privilege, and in the United States, where constitutional provisions place limitations on the revoking of charters and contracts, the situation is more complex than in Europe, where a franchise may be revoked at the will of the authority that grants it.

In addition to the existing difference of opinion as to whether general welfare is best secured by public or by private ownership of such industries as street railways, gas and electric light, and water services, the fundamental question as to what form the return to the public for privileges granted should take is still unsettled. Shall the community exact a money return in the form of taxes or division of profits, or shall it demand improvement in service and lower cost to the users? And this question is further complicated by the necessity not only of securing some return but of maintaining control over the service.

In states, such as the United States, where most public utilities still remain in private hands, the terms of the franchise are of prime importance. Franchises should be granted for a term of years sufficiently long to induce capitalists to invest in the enterprise, yet not so long that municipal control over the corporation is destroyed. Similarly, the terms of the franchise must combine fair treatment of private business enterprise, with proper provision for present and future public welfare.

In general, a good franchise will retain not only a properly safeguarded control over the charges of public-service corporations, but over their capitalization and dividends as well. Public supervision of accounting will also be provided for. The term of the franchise will depend upon the size of the city and the probable net returns, — from twenty-five to forty years at present being a fair period, — and provision will be made for the reversion to the city of the physical property of the company, at its appraised value, on the close of the franchise term. Ordinarily compensation will be exacted in the form of lower charges rather than in large financial returns.

[1] Rowe, Problems of City Government, chap. x.

5. *Municipal finance.* To carry on the varied functions of modern city life an extensive municipal revenue is demanded. Total municipal debts and expenditures are, in some states, as great as those of the national government. The revenue of cities is derived mainly from the income of public property and public services, from grants from the central government, and from numerous forms of local taxation. Unusual expenditures are met by loans. The control which the central authorities exercise over municipal finance varies, being more extensive in France than in Great Britain or Germany. In the United States local finance is subject to little administrative control, but legislative enactments impose certain restrictions.

OUTLINE OF CHAPTER XXIII

REFERENCES

IMPORTANCE OF COLONIAL DEVELOPMENT

1. NEW TYPE OF STATE
2. COLONIAL PROBLEMS
   - *a.* Social
   - *b.* Economic
   - *c.* Political
     - (1) Relations among states due to colonies
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     - (3) Effects of colonies on the relations of states to their citizens

HISTORICAL DEVELOPMENT OF COLONIES

1. ANCIENT
2. MEDIEVAL
3. MODERN
   - *a.* Portuguese and Spanish
   - *b.* Dutch
   - *c.* French and English

MOTIVES OF COLONIZATION

1. MOVEMENTS OF POPULATION
2. MISSIONARY WORK
3. INDIVIDUAL ENTERPRISE
4. COMMERCE AND COMMUNICATION
5. CAPITALISTIC EXPANSION
6. POLITICS

DEVELOPMENT OF COLONIAL POLICY

1. ANCIENT AND MEDIEVAL
2. SPANISH AND PORTUGUESE
3. DUTCH
4. FRENCH
5. ENGLISH

Colonial Policy of England

1. crown colonies
2. representative colonies
3. responsible colonies
4. imperial federation

Colonial Policy of the United States

1. historic development
   - *a.* From 1783 to 1853
   - *b.* From 1853 to 1898
   - *c.* Since 1898
2. present policy
   - *a.* District of Columbia
   - *b.* The territories
     - (1) Organized
     - (2) Unorganized
   - *c.* Samoa, Guam, and Panama Canal strip
   - *d.* Porto Rico and the Philippines

Forms of Colonial Government

1. spheres of influence
2. colonial protectorates
3. chartered companies
4. direct administration
5. self-government

CHAPTER XXIII

COLONIAL GOVERNMENT

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130. Importance of colonial development. The past century has witnessed a transition from nationalism to national imperialism.[1] Emphasis, until recently placed on national unity and self-sufficing life, has been shifted by a territorial expansion of nations and by the establishment in all parts of the earth of colonial dependencies. These perpetuate the national spirit; in fact, they often intensify it because of resultant territorial or commercial rivalries, although they are breaking down the natural frontiers and ethnic homogeneity on which national unity was originally based. As compared with the ancient city state, the Roman world empire, or the national

[1] Reinsch, World Politics, Part I.

state of the eighteenth century, a new type of political life seems in process of formation. National empires, consisting of vast and scattered areas inhabited by diverse peoples, whose international relations are marked by keen and intense rivalry and by an equilibrium of power preventing the preponderance of any, combine many of the characteristics of both world empire and national state.

Besides, this colonial expansion has opened up many difficult and formerly undreamed-of problems. The civilization and education of inferior peoples, and the responsibilities thus placed upon more enlightened nations, the conflict of diverse religious ideas, and the dangers inherent in unrestricted immigration represent a few of the imminent social questions involved. Similarly, problems arise concerning industry and commerce. Competition in business has been a powerful motive in the establishment of colonies and remains a constant source of dispute after their foundation. Economic interests are of increasing importance in the internal organization of states and in their international dealings. Most of the great wars of the past two centuries have been caused by commercial rivalry; and the future holds little promise that this source of difficulty will be diminished.

The governmental problems involved are of prime importance to the student of political science. Colonial development, in its influence on the state, affects the following relations:

1. *Of a state to other states.* It is evident that the possession of colonies, whose disputed boundaries, degrees of dependence, and relations with states other than those to which they belong give rise to important international controversies, demands considerable remodeling of international interests and regulations. For the mastery of North America and India, England and France engaged in a series of wars lasting over a century. The proximity of Russian and English interests in Asia at the present time causes mutual watchfulness on the part of those states; the establishment of German spheres of influence in South America was a source of uneasiness to the United States; and the recent desire for expansion on the part of Japan brings her into international prominence. Besides, colonial development has profoundly affected modes of warfare. To the great standing armies that the rise of

national states demanded, immense naval armaments have been added; and, in case of war, capture of commerce and destruction of property rather than of life is increasingly aimed at. Among imperial powers naval warfare is practically decisive, and upon its issue depends the map of the world.

2. *Of a state to its colonies.* This relation has widely varied. Sometimes control is exercised directly, sometimes by organizations deriving their authority from a superior source. At times the colonial population is granted no self-government and few civil rights; again they are practically self-governing and enjoy political privileges even greater than those of the inhabitants of the home state. In internal organization also colonial government shows considerable variation, though following in the main several well-defined types. In the functions performed by colonial governments and in methods of administration additional differences are found. Among the important questions of internal administration may be noted:[1]

(a) Education and general social improvement.
(b) Finance, currency, banking, and credit.
(c) Commerce and communication.
(d) Land policy and agricultural and industrial development.
(e) The labor question.
(f) Defense and police.

Each of these, under the diverse conditions existing in modern colonies, presents certain difficulties, whose solution will determine not only the welfare of individuals in the colonies, but the position or even the existence of the state itself.

3. *Of a state to its citizens.* The possession of colonies, with the problems that they bring in international and colonial affairs, must react on the internal political life of the state concerned. To prove this, a few illustrations will suffice. Colonial questions have long been a leading issue in the politics of England, and the recent growth of self-governing colonies, such as Canada, South Africa, Australia, and New Zealand, has given rise to the imperial federation movement.[2] Should this plan be put into practice, the fundamental organization of the British Empire would be affected.

[1] Reinsch, Colonial Administration. [2] See section 134.

The adoption of a colonial policy by the United States has unquestionably had considerable influence on the growing importance of national, as compared with commonwealth, government, and on the increasing authority of the executive. The disintegration of political parties may also be partly due to the fact that attention is turned more to external than to internal development, and that differences of opinion, valuable in deciding policies of home concern, become dangerous if the policy of the state in dealing with other states is thereby weakened. At all events, the practical amendment of the United States Constitution, resulting from the Supreme Court decision in the Insular Cases (1901), shows an unquestioned reaction of colonial policy on internal organization.

The importance of colonial development is vividly indicated by the mere figures reached in the area and population of existing colonies. Two fifths of the land surface of the globe is included in colonial possessions, and their population aggregates over five hundred millions. England's colonies alone cover an area of over eleven million square miles and have a population of over three hundred and fifty millions. The French possessions have a combined area eighteen times as great as France itself, and their population is half again as large as that of the homeland. Even the United States, the most recent recruit to the imperial powers, has colonies with a total area of one hundred and fifty-four thousand square miles and a population of over nine millions.

131. Historical development of colonies. The development of colonies is one phase of the general process by which the whole earth has been explored and brought under organized political regulation, and by which its population has been redistributed. In the territorial growth of states two main methods have been followed. One is that of gradual contiguous expansion, as in the case of Rome, or, more recently, of Russia and the United States. The other is the acquisition of remote and scattered possessions, as in the case of Spain during the sixteenth century or of the present British Empire. Similarly, movements of peoples show several main types. The migrations of early peoples were quite different from the later colonization that peopled the New World; and both of these differed from the immigration of the present day.

In its political sense the term "colony" is used to indicate a body of people occupying territory outside the boundaries of the state proper and yet retaining political allegiance to it. This usage would not permit one to speak, as in the ethnological sense, of the United States as a British colony or of Quebec as a French colony. The term "colony" is, however, broadened to include what are sometimes more specifically called "dependencies," — that is, possessions of a state, the greater part of whose inhabitants are natives, with only a small proportion of "colonists." Of this type India and the Philippines are examples. Accordingly, a colony may be defined as "an outlying possession of a national state, the administration of which is carried on under a system distinct from, but subordinate to, the government of the national territory." [1]

The first colonizing people of importance were the Phœnicians. Located on the shores of the Mediterranean, between Egypt and Mesopotamia, their situation was favorable for trade; and, in seeking markets and raw material, trading posts were established. Of these, Carthage, a permanent agricultural settlement as well as a trading post, was the most important; and it in turn extended its influence over adjacent islands and even in Spain, until at length its growing power was crushed by Rome. Meanwhile Greece was sending out colonies. The Dorian invasions and, later, the attacks of the Persians drove many fugitives to seek new homes. Growth of population, extension of trade, and especially the factional strife within the Greek cities led to the expansion of Greece over the adjacent islands, the coast of Asia Minor, and westward to Sicily and southern Italy. Soon after this Rome, in extending her jurisdiction by force of arms and by establishing *colonia* on conquered territory, laid the basis for her world empire.

In the Middle Ages the only colonies were those established by some of the Italian cities. They alone, during the disintegration of western Europe, retained industrial and commercial life; and, after freeing themselves from the overlordship of emperor and pope, they developed an active, restless life similar to that of the ancient Greek cities. Trading posts in the Orient were established by Pisa, Florence, and especially by Genoa and Venice. These

[1] Reinsch, Colonial Government, p. 16.

cities, profiting by the crusades, controlled the trade of Europe until, at the close of the Middle Ages, the activity of the Portuguese, the discovery of America, the conquests of the Turks, and the general expansion and shifting of trade left them at a disadvantage and cost them their scattered colonies.

Modern colonization began with the discovery of a sea route to the East Indies and the opening up of the New World. During the century from 1500 to 1600 Portugal and Spain alone took active part in this process. The Portuguese, sailing around the Cape of Good Hope, established themselves on the coast of Africa, in India, among the East Indies, and even reached China and Japan. Brazil, which had been accidentally discovered by a Portuguese ship on its journey around the Cape, was comparatively neglected; but by feudal grants of land to Portuguese nobles, by the efforts of the Jesuits, and by fugitive Jews and criminals, Portuguese authority was there established. Portugal was thus supreme on the seas and the possessor of vast territories until her liberty was lost to Spain (1580) and her possessions became the prey of all Spain's foes.

Spain, under whose auspices the New World was discovered, had just finished her long contest with the Moors; and the Spanish nobles and soldiers out of occupation, together with the clergy zealous for new fields of activity, naturally turned to the New World for adventure and profit. By grant of the pope (1493) the non-Christian world was divided between Portugal and Spain, and Spain proceeded vigorously to conquer and Christianize her western share. Through the efforts of conquerors, such as Cortez and Pizarro, and through the missions of the Jesuits, Spanish authority was extended over the West Indies, the Gulf coast, Mexico, Central and South America, and finally, by discovery, over the Philippine archipelago. As long as Spain controlled the seas her colonial empire was maintained and furnished enormous wealth for her treasury; but the rise of Holland and England as naval powers, together with Spain's repressive methods of colonial administration and her own internal decline, led to the capture of some of her colonies, the winning of independence by others, and recently the loss of the remainder, except for a few fragments in Africa, after the Spanish-American War.

The rise of the Dutch colonial empire presented several new features. In their long and bitter war against Spain the Dutch not only won their independence, but increased their wealth and commerce; and, in attacking Spanish-Portuguese power through its colonies, they built up a colonial empire. In 1580 Portugal came under Spanish jurisdiction, and Holland, whose industries were dependent upon supplies drawn from the East through Portugal, was shut out by Spain from trade with the Iberian peninsula. As a result, the Dutch, while waging a desperate war on land, turned boldly to the sea, and, attacking the feeders of Spanish power, laid the basis for their present colonial empire in the East Indies. The defeat of the Spanish Armada by England was a fortunate coincidence, and by 1600 the Netherlands had become the great commercial power in the Orient. Inspired by this success, other Dutch merchants began the invasion of the West. Several islands of the West Indies group, Dutch Guiana on the north coast of South America, and the settlements around Manhattan and on the Hudson were the chief fields of their activity. During the eighteenth century the Dutch colonies declined. Misgovernment ruined the colonies and injured the homeland; England became the chief naval power; the United States secured much of the Dutch carrying trade; and for a time the Netherlands were brought under the sway of Napoleon. During the past century Holland has regained a prominent position in colonial affairs; and while many of its former dependencies were relinquished to England, its present possessions, the most important of which are the East Indies, cover an area of seven hundred and eighty-three thousand square miles and have a population of about thirty-six millions, of whom, however, less than one hundred thousand are whites.

France and England, while sharing in the early discoveries and explorations, took no steps toward the establishment of colonies until the seventeenth century. Then they became active and bitter rivals. In America, French adventurers, traders, and missionaries settled the St. Lawrence and Mississippi valleys; while English colonists, with little encouragement from the homeland, established themselves along the Atlantic coast. As these settlements

expanded, the inevitable conflict, fought out in a series of wars lasting over one hundred years, resulted in the expulsion of France from America; although, in the course of this contest, because of England's colonial and commercial methods, the most valuable of her American colonies revolted and secured their independence. Similarly, in India the two states were rivals and there also the English were successful. Meanwhile the naval supremacy which England attained during the wars of the seventeenth and eighteenth centuries enabled her to wrest colonial possessions from Spain and Holland as well as from France, and to lay the foundation for her present widespread empire.

During the past century colonial empires have expanded until practically all the inhabitable parts of the earth are parceled out among the leading states. The islands of the Pacific, large tracts in Asia, and the continent of Africa have been the chief fields of recent activity. England has extended her control over India, and, through the work of her explorers and settlers, has opened up new lands. Australia, at first a convict settlement, has become a prosperous and progressive colony and, with New Zealand, has become famous for its experiments in social reform. In Africa, England secured Cape Colony from the Dutch during the Napoleonic period, and her gradual expansion northward came to a climax in the recent Boer War, by which she secured additional territory. The completion of the Suez Canal, opening a short route to India, has led England to secure possessions in the eastern Mediterranean and in Arabia; and, interfering in Egypt, she has pushed southward until, with the newly acquired German lands, it will be possible to build the Cape-to-Cairo Railroad exclusively in British territory. Other possessions in Africa and many scattered islands and coast towns are included in the British Empire, — the whole covering one fifth of the land surface of the globe.

France, since the loss of her American and Indian colonies, has turned her attention to Africa and holds almost all the north coast, the greater part of the Sahara desert and of the valley of the Niger, central Africa north of the Kongo, and the island of Madagascar. France has also acquired extensive possessions in Indo-China and holds scattered islands in many parts of the earth.

Her dependencies cover an area of four million, two hundred thousand square miles and have a population of fifty-six millions. Germany, in 1884 and the following years, acquired various protectorates and spheres of influence, especially in Africa, China, and the Pacific. These possessions were taken from her at the close of the recent war and were distributed, chiefly as mandates, to the British Empire, Australia, New Zealand, and Japan. The disposal of the Shantung province in China has been the most troublesome problem created in this process. Portugal retains a remnant of her former possessions in Africa, and Italy and Belgium have also shared in its partition. Recently the United States has entered the field of colonial expansion, and, by the Spanish War and by annexation and occupation, has secured Porto Rico, the Hawaiian group, the Philippines, and other islands. Protectorates and spheres of influence have also been established in the Caribbean region.

132. Motives of colonization. After the preceding outline of the origin and distribution of colonies from a territorial standpoint, a brief summary may be made of the motives that have led to the foundation of colonies and of the methods by which they have been established. The following are among the most important:[1]

1. *Movements of population.* Mere growth of population, causing overcrowding, is an important, though often overestimated, factor in the migration of peoples. In the colonies established by the Greek cities and in the present exodus of the rapidly increasing German population, this cause may be traced. More important is dissatisfaction with existing economic, political, or religious conditions. The establishment of the Puritans in New England and the more recent emigration of the Irish and of the Russian Jews are typical examples of such movements. Sometimes emigration is induced or forced by the colonizing state, as was the case in some of the French colonies of the seventeenth century, and in the sending of indentured servants and the founding of penal settlements by England. In modern colonies the proportion of the entire population composed of immigrants from the home states is comparatively small, the major part consisting of natives or descendants from former colonists.

[1] Reinsch, Colonial Government, Part I.

2. *Missionary work.* Ever since the discovery of America the zeal to convert the heathen has, consciously or unconsciously, preceded or accompanied colonial expansion. The work of Spanish, Portuguese, and French priests in the early history of America at once suggests itself; and, more recently, missions have paved the way for England's foothold in Australia, Guiana, and South and Central Africa. France began her intervention in Cochin-China on account of French missionaries, and exercises a powerful influence in the region of the eastern Mediterranean, through the protectorate she maintains there over Roman Catholic missions. Italy, Germany, and Russia are also supporting missionary activity in the Levant as stepping-stones to future political power. In China spheres of influence were established, at least by Germany and France, as the result of intervention after the murder of missionaries; and in some parts of Africa serious obstacles are placed in the way of missionaries of states other than those to whom the territory belongs, frequent assertions of the political activities of missionaries being made.

3. *Individual enterprise.* The spirit of adventure frequently leads men to seek new fields for their exploits, and new lands are thus discovered and opened up. When conditions become settled and national boundaries are well defined, restless spirits set out to explore and conquer new realms. This tendency characterized the sixteenth century and is again noticeable at the present time. Interest in exploration marked the discoverers of the New World and paved the way for the partition of Africa. Desire for wealth or power has been a constant motive from De Soto and Cortez down to Warren Hastings and Cecil Rhodes. Government officials, civil or military, stationed on the outposts of their states' possessions, are frequently tempted to undertake expeditions that their states would hesitate to authorize, but whose benefits they are usually ready to accept. When trade and capital follow the paths of adventurous individuals, protection by the state soon passes into political control.

4. *Commerce and communication.* The desire for trade has always been a powerful motive in colonial expansion. Carthage, Greece, and Venice had trading ports along the coasts of the

Mediterranean in ancient times; Portugal, Holland, and England have contended for the profitable products of the Spice Islands; and French fishermen and fur traders were among the first permanent settlers in the New World. Merchant adventurers and great colonial commercial companies established British dominion in America and in India. To-day an important motive in acquiring territory is the necessity for disposing of surplus production, and states still try to monopolize the commerce of their colonies. In addition to the community of customs, language, and laws, which make colonies a natural market for the homeland, tariff restrictions, as in the French possessions, or preferential rates, as in the colonies of England and in the Philippines, influence the movement of trade.

The necessity for keeping open easy means of communication for this world commerce, and of securing bases of supply for navies has led to extensive acquisition of scattered colonies. England's trade route to India led her to acquire South Africa, to control the Suez Canal, and to secure extensive interests in the eastern Mediterranean and in Egypt. The desire of Russia for an outlet to the sea has resulted in international complications concerning the Baltic, the Black Sea, and the Pacific. Both the westward continental expansion of the United States and the recent acquisition of island dependencies have been influenced by this same need of communication. Singapore, Hongkong, and similar centers owe their importance to the fact that they are the depots of Asiatic commerce, and many barren islands are of strategic value as naval coaling stations.

5. *Capitalistic expansion.* Since the Industrial Revolution the internal resources of the most advanced states have been rapidly developed and a growing surplus of capital has accumulated. England found herself in this position a century ago, and, at present, capital in the Netherlands, France, and the United States is also seeking profitable investment. New lands with undeveloped resources offer the greatest opportunities; hence the recent building of railroads, opening up of mines, development of agriculture, and the establishment of industries in remote parts of the earth. This movement has had important political results. Not only do

capitalists naturally desire the protection of their state extended over their investments, but the development of resources, reaching into the interior of new regions, necessitates more extensive interference than the former coast trade demanded, and protection for capital easily shades off into spheres of influence, protectorates, and dependencies. The vast interests of English capitalists in all parts of the earth, American investments in Mexico and Central America, the interests of France in Russia, and the concessions to foreign capitalists in various sections of China, — all suggest important problems for the future.

6. *Politics.* Colonies have sometimes been established for political motives by the direct initiative of states. Such settlements have aimed to extend national territory and prestige, to hold lands previously claimed, or to prevent the expansion of rival powers. In ancient times the Romans founded colonies for political motives; in the seventeenth century France, largely because of national pride, attempted to build up a colonial empire in America, and her recent expansion in North Africa indicates a similar motive; many of the territorial additions made by England in Africa and by Russia in Asia are of the same type. At present many states consider their territorial bases too limited, and national rivalries lead them to desire to control as large a portion of the earth's surface as opportunity will permit. Frequently such colonies are of no great value in themselves, and may even be heavy burdens on the colonizing states.

As a result, earlier colonial expansion, largely the work of individuals and carried on with no preconceived plan, is being replaced by far-reaching schemes of national expansion. The construction of railways, the building of navies, the movements of armed forces, together with the insistence upon opportunity for trade and investment, show the energies of modern national states in building up national empires. Already the nations have preëmpted areas far in excess of their present needs or their ability to assimilate. Not only have those parts of the earth uninhabited by civilized peoples been partitioned among the great powers, but even the homes of old and flourishing civilizations are considered fair fields for protectorates and spheres of influence.

133. Development of colonial policy. Colonies of the ancient world were usually either mere trading stations or settlements whose political allegiance to the home country was very slight. Accordingly, colonial government in the proper sense did not exist. Athens for a time exercised control over the cities composing the Delian League, and the Roman soldiers who formed the *colonia* retained their Roman citizenship. However, in neither case were true colonial empires established, the former falling to pieces and the latter merging into a centralized state. Again, in the Middle Ages the trading posts established by the Italian cities were unlike modern colonies, as little attempt was made to govern the inhabitants, the Italian cities being satisfied if the interests of their own merchants were safeguarded.

With the discoveries of the fifteenth century modern colonization began, and the general features that characterized the colonial policy of Spain and Portugal were developed amid the conquests and adventures accompanying the opening up of the New World. Colonies were regarded only as sources of profit for the home states; their own development or the welfare of their inhabitants was of secondary consideration. Self-government was not permitted, and elaborate regulations surrounded commerce and industry. Colonies were governed directly from the mother country by means of a centralized system of officials, few of whom were permanent colonists. Laws were made with little understanding of conditions in the colonies, and immigration was limited to citizens of Spain and Portugal who were members of the Roman Catholic church. Trade in the Spanish colonies was, with few exceptions, limited to Spanish merchants and ships, and these in turn were under the control of the *Casa de Contractacion*, the great organization that possessed the monopoly. Ships traveled in fleets once a year from one or two ports, and restrictions both inconvenient and burdensome placed a premium upon smuggling. While the magnitude of the task confronting these pioneer colonial states, and the value of their work, especially that of the Jesuits, in at least sowing the seeds of civilization, is seldom appreciated, it is evident that their system was doomed to failure. The colonies were impoverished, their race stock degenerated, and corruption in government and

the burden of industrial and commercial restrictions led to revolt and final independence.

Holland, France, and England, the colonial powers of the seventeenth and eighteenth centuries, while holding to the general theory that colonies existed for the benefit of the home state, who should govern them and control their trade, made numerous improvements in colonial methods. In the absence of well-filled national treasuries and a wealthy nobility, both state and individual initiative were difficult. Instead, chartered companies were granted rights to hold land, monopolize trade, and exercise governing authority in certain areas, and by their efforts the basis of colonial empire was laid.

The Dutch East India Company, chartered in 1602, was granted the monopoly of trade and the right to govern in the East Indies. Its efforts were directed to increase Dutch trade in the Orient, and it founded no colonies for motives of religion, conquest, or civilization. Stations were usually located on islands rather than on the mainland, and comparatively few colonists went out from Holland. Thus a great aristocratic corporation grew up within the Dutch state, and for over a century it enjoyed remarkable prosperity. In the eighteenth century it declined. Attention was devoted exclusively to spices, tyranny and corruption on the part of officials caused disaffection among the natives, and antiquated regulations restricted trade. An inquiry into the accounts of the company, ordered by the States General in 1789, showed enormous debts, and at the end of the century the company ceased its activities, gave up its lands to the state, and was legally dissolved. During the past century, under state control, the colonies of Holland have again become prosperous.

The French government, while also chartering companies, realized the possibilities of colonial empire, and gave constant encouragement and aid. The French colonies were handicapped, however, by the comparatively small number of colonists who came out from France, by the religious restrictions placed on immigrants, and by the scattered settlements, interested in immediate gain rather than in permanent occupation. The paternal policy of the French government, sometimes neglectful and again overindulgent

in expenditures for colonial purposes, prevented the colonies from becoming self-supporting. In accordance with the theory of that time, colonial trade was monopolized for the benefit of France, and the centralized bureaucracy that controlled colonial policy cared little for the welfare of the colonists. The internal difficulties that beset France, her interest in military rather than naval strength, and her long contest with England deprived her of the greater part of her original colonies. Recently France has gone to the other extreme in her colonial policy. While retaining much of the red tape of her former centralized system, she treats her colonists, most of whom are natives, as if they were Europeans. France alone admits colonial representatives to her national legislature; and while the present French colonies are a heavy financial burden, no state is more interested in colonial problems or more ambitious for colonial empire than is France.

In contrast to the colonies of France, England's first colonies grew up neglected. Composed largely of religious and political refugees or of persons excluded from the Spanish and French colonies, they formed permanent settlements and became strong in spite of England's lack of interest in colonial enterprise. Charters were issued to companies or grants made to individuals with little knowledge of the possibilities involved, and with but feeble attempts to retain control. By the migration of the officers and members of the Massachusetts Bay Company to America, the charter intended for the governing of a trading company became a constitution for colonial self-government, and England's difficulties at home during the greater part of the seventeenth century prevented active interference with the growing strength and independence of her new possessions. Not until American trade became of importance to British merchants, and rivalry with Holland and France involved colonial interests, did England pay much attention to her oversea settlements. Then, in accordance with the prevailing Mercantile Theory, a series of Navigation Acts, aiming to exclude other states from the trade of the colonies, demanded a monopoly for English merchants and shipping. These acts, while causing some hardship, were systematically evaded, and in some respects, at least, were of mutual benefit. Later attempts to

restrict American manufactures and to levy direct taxes for the defraying of expenses incurred in the long colonial wars with France caused greater disaffection. Back of all these were the inevitable differences caused by conditions in England and in the colonies, intensified by constant conflicts between the colonial governors, representing the crown, and the assemblies, representing the colonists. Finally, the American Revolution, really an episode in the long contest between England and France for world supremacy, and between king and people for sovereignty in England, led to the independence of the American colonies and to a radical change in British colonial policy.

At first England attempted to strengthen her control over the remaining colonies, but a number of causes were leading to the present system of colonial self-government. The free-trade movement that swept England during the first half of the nineteenth century removed the commercial restrictions on which previous colonial policy had been based. Increasing democratic spirit affected the colonies as well as the homeland; in fact, many leading English thinkers looked forward to the time when all the British colonies inhabited by enlightened peoples would follow the example of the United States and establish independent states. It was therefore the duty of England to train them in self-government and prepare them for their "manifest destiny." Naturally, then, as colonies grew in population and intelligence, both justice and policy, as well as the experience of the American Revolution, demanded that the colonies be given a share in government, and that their interests and not those of England alone should be considered.

At present Japan, Italy, and Holland grant small powers of self-government to their colonies. Administration is carried on by governors and commissioners appointed by the home state, the small proportion of European population making the application of the elective principle inadvisable. France, in those colonies where the proportion of European population is small, governs through appointed officials or through military authorities. In some of the older colonies elected councils are permitted; several of the colonies are represented in the French Senate and Chamber of

Deputies; and Algeria is divided into departments and governed as a part of France. The present colonial policy of England and of the United States will be discussed in the following sections.

134. Colonial policy of England. Great Britain has never definitely established a colonial system, neither has she laid down general principles of colonial policy and attempted to adapt the government of her dependencies to them. Her colonies differ in size, population, military or naval importance, wealth, race, and civilization, and have been acquired by various means. As a result colonial administration has been adapted to circumstances and modified by experience, self-government being granted in proportion to the number of white inhabitants and the degree of civilization. In the details of their government present British colonies exhibit all degrees of dependence, but a general classification, that adopted by the British Colonial Office,[1] may be given:

1. *Crown colonies.* In these the crown has entire control of legislation, while administration is carried on by public officers under the control of the home government. No pretense of popular government exists; the welfare of the native inhabitants as modified by the presence of British colonists is aimed at, and in the great military and naval stations even this is subordinated to the commercial or strategic importance of the colony. The governor and his officials, appointed by the crown, rule the colony, sometimes with the advice of resident colonists who are appointed to membership in the council. Included in this class are the Straits Settlements, Trinidad, Honduras, Sierra Leone, and others, together with such stations as Gibraltar, Hongkong, Singapore, and Aden.

The Indian Empire, while not considered a colony, is, in so far as it is governed at all, administered directly by agents of the crown. About seventy millions of its population are included in the native states, over which only a negative control is exercised. They contain advisory British residents, and may not make war or hold diplomatic intercourse with one another or with outside states. Subject to such restrictions, however, they are governed according to their own customs and laws by native princes, although these latter may be removed by British authority, if necessary, and some

[1] Colonial Office List, 1901.

are required to pay annual tribute. The remainder of the three hundred millions are included in British India proper. Its government is controlled by the crown, represented by the Secretary of State for India, who is assisted by a council of former residents in India, holding office for ten years. No member of the council may sit in Parliament. This home government is represented in India by a governor-general, or viceroy, appointed by the crown, assisted by an executive council similarly appointed, whose members act as heads of the departments of administration. The legislative council of the Indian Empire consists of these heads of departments, with the addition of sixteen members appointed by the viceroy. The nine provinces into which India is divided for administrative purposes are similarly ruled by governors and councils appointed by the crown or the viceroy, although in the governments of municipalities the principle of election has been introduced.

2. *Representative colonies.* These possess representative institutions, but not responsible governments, and while the crown has only a veto on legislation, the home government retains control over public officers. In all these colonies the executive officials are appointed, but election is partially permitted, the legislatures consisting sometimes of a single House, partly elected and partly appointed; sometimes of two houses, one being elected. The general principle thus gives legislation largely into the hands of the colonists, but leaves administration to officials appointed and controlled by the home government. Even in legislation the governor's veto is frequently used. To this class belong Jamaica, the Bahamas, Bermuda, British Guiana, and others.

3. *Responsible colonies.* These possess representative institutions and responsible governments. The crown has only a veto on legislation, and the home government has no control over any public officers except the governor. Executive councilors are appointed by the governor without the necessity of concurrence by the home government, and the administrative departments are directed by persons who command the confidence of a representative legislature. The government of such colonies, resting on parliamentary statutes, which form colonial constitutions, is an imitation of the responsible parliamentary government of the home state, the real

executive being the colonial prime minister and cabinet, whose tenures depend upon maintaining a majority in the lower house of the colonial legislature. Except for the appointment of the governor, the right to disallow colonial statutes, the reservation of final judicial appeal to the judicial committee of the Privy Council, and, of course, the final right of Parliament to modify existing arrangements if it so desires, complete self-government is permitted. The governor's veto is used only when foreign affairs of the Empire are affected, or when colonial statutes are inconsistent with existing imperial legislation. Suffrage rests on a broad basis, and colonial law, defense, and finance are left in colonial hands. Even protective tariffs have been established by all the self-governing colonies, though English goods are admitted at preferential rates; and in negotiating treaties affecting these colonies, Parliament considers the wishes of the colony concerned. This class of colony includes Newfoundland, New Zealand, and the commonwealths of Australia, Canada, and South Africa.

To the foregoing classification two objections may be urged. In the first place, it makes no provision for the spheres of influence, protectorates, and areas governed by chartered companies, that really form part of the British Empire. In the second place, it is difficult to draw a line with any degree of distinctness between crown colonies and representative colonies. Accordingly many writers prefer a twofold classification into colonies under direct administration and colonies possessing self-government. Such distinction rests not only on a difference in institutions, but also on physical, especially climatic and racial, conditions: the former including tropical areas inhabited mainly by natives; the latter, temperate areas inhabited mainly by whites.

In contrast to the original British colonial policy that considered only the welfare of the home state, and to that later theory that looked forward to the ultimate independence of the colonies, a new attitude toward her more important possessions has recently arisen in England. The growing importance of self-governing colonies, whose population and resources rival those of England itself, raises important questions concerning their political future. Many ties create a feeling of union within the British Empire. Among these

are investment of British capital in the colonies; reciprocity in industrial interests, since colonial raw materials are exchanged for England's manufactured goods; security from outside attack; community of language, literature, traditions, and general culture; and the natural pride in belonging to a powerful empire. Geographic situation prevents complete amalgamation, but the subordination of imperial interests to the local Parliament of the British Isles will scarcely remain permanent. The Australian and Canadian provinces have already accomplished federal union, and the South African colonies are just taking (1910) a similar step. In these circumstances a movement for imperial federation has found support both in England and in the colonies.

This plan became a political movement with the establishment of the Imperial Federation League in 1884. Numerous schemes have been proposed. Some would create an imperial parliament of delegates from the leading colonies and reduce the present British Parliament to a mere local body. Others would admit colonial representatives to the existing Parliament or create an additional federal council. At present commercial federation attracts more interest than plans of federal political organization. An imperial tariff against other states, with free trade within the Empire, or at least preferential rates among its various members, is seriously considered. General satisfaction with present conditions, conflicting economic interests among different parts of the Empire, and British political conservatism will probably prevent any immediate or radical readjustment.

135. Colonial policy of the United States. The territorial expansion of the United States falls naturally into three periods:[1]

1. *From 1783 to 1853.* During these years the United States was gradually filling out its natural boundaries. Territory acquired was contiguous, and was settled, in the main, by people holding political ideals similar to those in the older territory.

2. *From 1853 to 1898.* Except for Alaska and a few small islands, all of which were considered of little value, no territorial growth took place. Energy was devoted to the development of the great domain previously secured.

[1] Willoughby, Territories and Dependencies of the United States, pp. 5–8.

3. *Since 1898.* By the acquisition of remote and scattered possessions, inhabited by peoples in various stages of civilization, the United States has begun a new type of expansion, involving new problems and necessitating new methods of government.

Accordingly the colonial policy of the United States may be divided into that prevailing before 1898 and that which has since been developed, although a remarkable unity of purpose runs through both periods. For instance, the United States has never held that colonies existed for the benefit of the homeland. On the contrary, each dependent territory has been administered with a view to its own advancement, even at considerable outlay on the part of the United States. In addition, self-government, in so far as the condition and character of its inhabitants made it possible, has been granted to each dependent territory. This has been accompanied by efforts to educate the population in political principles and methods, and additional political rights have been extended as soon as conditions warranted such action.

In spite of these general features several fundamental differences characterize present, as compared with earlier, principles. The Northwest Ordinance of 1787, applying to the area lying north of the Ohio and east of the Mississippi, outlined the general policy that Congress, with few changes, repeated as each additional territory required some form of organization. While Congress took the position that it had full authority, and that all rights enumerated were the result of its legislative action, it did extend the full rights and privileges of American civil liberty to inhabitants of the territory. It also provided two schemes of government. Appointed officials were to govern temporarily; but a representative legislature was to be added as soon as the population reached a certain point, and territorial delegates, with the right to debate but not vote, were to be sent to Congress. The act further provided that the territory should in time be divided into districts, which should be admitted into the Union on equal terms with the original commonwealths. These general provisions — full share in civil liberty, temporary government by appointed officials with speedy share in self-government, qualified representation in Congress, and ultimate incorporation into the Union —

were applied to later acquisitions, and still form the basis of the government of our organized territories.

Since the Spanish War the United States has been compelled to modify somewhat its former policy. Peoples of a low order of civilization, sometimes in revolt against organized authority, are not in a position to receive full civil liberty or to share extensively in government. Neither do territories of this nature offer immediate possibility of admission into statehood. The best interests of both colony and homeland may even demand the establishment of tariff barriers or restrictions on free movement of population. Consequently the United States has been compelled to divide its territory into "two classes having a different political status; the one constituting the United States proper and enjoying full political rights and privileges, and the other dependent territory in subordination to the former, and having its form of government and the rights of its inhabitants determined for it." [1]

The present government of the possessions of the United States may be summarized as follows:

1. *The District of Columbia.* Congress is given by the Constitution the right "to exercise exclusive legislation" over the area that should "become the seat of the government of the United States." After trying various types of government, — commissions, mayor and councils as in cities, governor and assembly as in territories, — the present form, established temporarily in 1874, was made permanent in 1878. All legislative powers are retained by Congress, although it delegates large powers to the three commissioners who form the heads of administration. Of these two are appointed from civil life by the president, and one is detailed from the engineering corps of the army. The District also has its own series of courts. The population of the District is completely disfranchised and has no representative in Congress. About half the expenses of government is borne by the national government and half by the taxpayers of the District. As compared with previous conditions, the present system has been remarkably successful.

2. *The territories.* With the admission of Arizona and New Mexico to statehood in 1912, the type of government through

[1] Willoughby, Territories and Dependencies of the United States, p. 7.

which most of the commonwealths have passed practically disappeared. Hawaii and Alaska alone retain the territorial form.

Alaska, secured from Russia by purchase in 1867, remained under direct government from Washington until 1912, when Congress provided for an Alaskan senate and house of representatives, both elected by popular vote. The executive authority is vested in a governor appointed by the president and Senate of the United States. The Hawaiian Islands were annexed to the United States by a joint resolution of Congress in 1898, and the organic act creating their government was passed in 1900. The Constitution and laws of the United States were extended to Hawaii, and American citizenship was conferred upon all persons who were citizens of the Hawaiian Republic in 1898. The governor and secretary of the territory are appointed by the president and Senate of the United States; the legislature consists of a popularly elected senate and house of representatives.

The people of each territory, while having no vote in national elections, are represented in Congress by a delegate to the House of Representatives, who may take part in debate but may not vote.

3. *Samoa, Guam, and the Panama Canal strip.* Most of the small insular possessions of the United States, such as Wake Island, Midway Island, Howland and Baker islands, are practically uninhabited, and no provision for government is necessary. Samoa and Guam are governed by the naval commandants in charge of the naval stations, the natives in most respects being left free to observe their own customs. The Panama Canal zone is governed temporarily, under the direction of the War Department, by a commission of seven men appointed by the president. To them authority to establish a civil service and to legislate, subject to the approval of the Secretary of War, on all subjects not inconsistent with the laws and treaties of the United States, has been granted.

4. *Porto Rico and the Philippines.* Both these dependencies, acquired by cession from Spain (1898), were at first under military rule. The Organic Act, establishing civil government for Porto Rico, was passed by Congress in 1900. As modified by several later amendments, it created the existing government of a legislature consisting of a lower house of thirty-five members elected by

the qualified voters of the island, and an upper house and governor appointed by the president of the United States. The upper house of eleven members, of which at least five must be Porto Ricans, also acts as an executive council, and six of its members form the heads of the executive departments. The higher judges are appointed by the president, the lower by the insular governor and council. A representative from Porto Rico is sent to Washington with the same privileges as a delegate from the territories, and an extensive system of local government has been created by the insular authorities. Except for a temporary tariff during the period of military rule, Porto Rico has enjoyed free trade with the United States and the same tariffs with foreign states as those established by the United States. All customs duties, after the cost of collection by United States officials is deducted, are expended for the benefit of the island. Internal taxes and excises are levied by the insular government, and a limited borrowing power may also be exercised.

After the report of a special commission appointed (1899) to investigate conditions in the Philippines, the president, acting under his authority as military commander in chief, appointed a commission, consisting of a president and four members, to replace the military government of the islands. In 1901 an act of Congress shifted this government from a military to a civil basis, three natives were added to the commission, the president of the commission was made the civil governor, a vice governor was created, and provision was made for the establishment of four executive departments to be presided over by the four American commissioners. A system of provincial and municipal government, adapted to the needs and civilization of the various provinces, was drawn up by the insular government and a special system of tariff and of currency was established by Congress. In 1902 Congress finally passed the Organic Act for the government of the Philippines. While retaining temporarily the existing government, it provided that two years after the pacification of the islands and the completion of a census, the following government should go into effect. The present governor, vice governor, and commission, appointed by the president and Senate of the United States, remain in charge

of administration; but for legislation a lower house of natives, elected by the qualified voters of the islands, is added to the commission which forms the upper house. Judges are chosen as in Porto Rico, and two delegates, acting somewhat as ambassadors, represent the Philippines in Washington. In 1905 the census was completed, in 1907 elections for a native legislature were held, and in 1908 the above organization went into effect. Thus far its actions have been in the main conservative and successful.

136. Forms of colonial government. A brief summary of the leading types of colonial government may now be made. While one form shades gradually into another, and wide variations are found within each group, a rough classification follows:[1]

1. *Spheres of influence.* During the past quarter of a century states, in their eagerness to secure colonial possessions, have not been satisfied with gradual occupation of new lands by colonists or capitalists. States themselves, even before they were ready to occupy or to govern, have outlined certain areas for future activity. This process naturally led to disputes and necessitated mutual understandings and treaties. By the Berlin Conference (1885) and the Brussels Conference (1890) international rules concerning spheres of influence were laid down, and they may accordingly be defined as "tracts of territory within which a state, on the basis of treaties with neighboring colonial powers, enjoys the exclusive privilege of exercising political influence, of concluding treaties of protectorate, of obtaining industrial concessions, and of eventually bringing the region under its direct political control."[2] This doctrine has found its most important application in the partition of Africa, in Siam, and, in a modified form, in the opening up of China.

2. *Colonial protectorates.* The favorite method by which dependencies pass from the negative control of the sphere of influence to the direct authority of colonial government is by the establishment of a colonial protectorate. This form of government, modeled upon the international concept of protectorates between stronger and weaker states, takes various forms and may be intended as a transitional step toward direct administration, or, because of

[1] Reinsch, Colonial Government, Part II. [2] Ibid., p. 103.

its advantages, as a permanent means of control. Its essential features include noninterference with local customs, institutions, and laws unless absolutely necessary; control by the protecting state of all foreign relations of the colony; and the presence in the colony of representatives of the protecting state, who exercise an influence on internal administration. International law holds the protecting power responsible for the acts of such territories, considering them as parts of its dominions, but in municipal law colonial protectorates are not considered subject to the direct legislative authority that a state exercises over its own territory. In dealing with uncivilized peoples a protectorate is usually temporary, although nominal protectorates exist in many parts of Africa that have actually been brought under more direct control. When an advanced but dissimilar type of civilization must be dealt with, the protectorate has obvious advantages. Tunis and parts of Indo-China are controlled by France in this fashion; England in India and the Dutch in Guiana have adopted modified protectorates as convenient forms of administration; and Egypt is practically a British protectorate, whatever may be its legal position in international law.

3. *Chartered companies.* Colonial commercial companies prepared the way for direct political control during the seventeenth century, and recurring competition for the rich trade of unappropriated regions has, during the past quarter of a century, given rise to similar organizations, with similar political results. The British North Borneo Company (1889) is probably the most powerful, financially and politically; the International Kongo Association (1879) created an independent state; and other companies, British, German, and Portuguese, have shared in the partition of Africa. As distinguished from earlier companies, those recently established enjoy larger political powers, practically controlling internal administration in the areas over which their rights extend. As a consequence they are subject to a stricter control on the part of the home government, making the transition from a sphere of influence to colonial dominion natural and easy. Besides, modern companies do not possess a monopoly of commerce, their attention being directed rather to the industrial exploitation of natural resources

than to trade. The rapidity and economy with which such companies have extended their sway is remarkable. Two thirds of the recent territorial expansion of Great Britain in Africa followed the activities of private chartered companies that received no subventions from the government. They did receive, however, valuable territorial and mining concessions, and these grants to private individuals and corporations may ultimately retard settlement and progress.

4. *Direct administration.* In most colonies proper the government of the home state has entire control of legislation, and administration is carried on by public officers under home control. Colonial organization consists of a governor, usually assisted by councils that are appointive or partly or wholly elective. Such councils have, however, little legislative power, their functions being mainly advisory, although in some cases, for example the Council of the Dutch Indies, they exercise considerable power and influence. Of such nature is the government of most French, German, and Dutch dependencies and of the greater number of England's possessions. Most of them are tropical colonies where white settlers are few in number and where self-government is considered undesirable.

5. *Self-government.* A few colonies possess representative institutions and responsible government. The home government retains only a veto on legislation, has no control over any colonial official except the governor, and seldom interferes in the internal affairs of the colony. Administration is controlled by persons having the confidence of a representative legislature, and even the veto power of the governor, acting as the representative of the interests of the Empire, is seldom used. The leading self-governing colonies are the commonwealths of Australasia, Canada, and South Africa. These have successfully imitated the British type of government and have developed an almost independent political life. Their relation to the mother country resembles federation rather than subjection; in fact such colonies are often compared to international protectorates, since, in both, foreign relations are controlled by the paramount state, but autonomy exercised in local affairs. The process of federation, already carried out in these

colonies and strongly urged by some for the entire British Empire, is a logical result of colonial self-government when common interests prevent entire independence.

In the organs of colonial administration located in the mother country considerable variation is found in modern states. Generally the home organization is simple if colonies are allowed extensive powers of self-government, and elaborate if colonial affairs are closely supervised by the home state. France has an intricate central colonial administration, under a separate ministry of colonies. Administration of colonial affairs in England is divided among the Colonial Office, which controls the colonies proper; the secretary of state for India, who directs Indian affairs; and the Foreign Office, which administers the protectorates. In the United States, Congress has final authority, but it has delegated powers to various branches of the government. As yet no separate department of colonial affairs has been organized.

PART III

THE ENDS OF THE STATE

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CHAPTER XXIV

THE PROVINCE OF GOVERNMENT

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Woolsey, T. D. Political Science, Vol. I, Part II, chap. iv
Zenker, E. V. Anarchism

137. The aims of the state. Whether the state is an end in itself or whether it is merely a means enabling individuals to attain their ends has been a much-disputed question.[1] The ancients regarded the state as the highest aim of human life and as an end in itself. Accordingly they subordinated the individual and often sacrificed personal freedom and the promotion of general welfare. On the other hand, a large school of writers, especially in England and America, have regarded the state as a mere institution, artificially designed to promote the welfare of the greatest number of individuals. From this standpoint it is difficult to justify the heavy burdens that states lay upon their citizens for the benefit of posterity, or the obligations that they feel for their poor or helpless. Besides,

[1] Bluntschli, The Theory of the State, Bk. V.

the sacrifice of property and of life that individuals make when the safety of the state is threatened would be useless if individual welfare were the only end.

Both of these views, then, are somewhat one-sided. From the standpoint of the individual the state is a means through which the highest development of humanity is aimed at. At the same time the state, considered apart from the individuals that compose it, or viewing them only as they are members of the body politic, is an end in itself. Usually the welfare of the state and that of its individuals coincide, but sometimes they diverge somewhat and occasionally they may be altogether opposed. The purpose of the state, considered as an end in itself as well as a means for the attainment of individual ends, is not stated alike by all writers on political science, although a general similarity of conception may be observed. Bluntschli formulates the proper end of the state as "the development of the national capacities, the perfecting of the national life, and finally its completion, provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity." [1] The state has thus the double function of maintaining the national powers and of developing them.

Von Holtzendorff holds that the state has a triple end.[2] The first is power, by which the state may preserve its existence and position against other states, and its authority over all individuals and associations of individuals within itself. The second is individual liberty, or that sphere of freedom which the state marks out for the individual and protects against encroachment on the part of government and individual. The third is general welfare, which the state must secure by maintaining peace and order and by aiding and educating its subjects.

Burgess [3] separates the proximate from the ultimate ends of the state, arranging them as primary, secondary, and ultimate purposes, each end becoming in turn a means for the accomplishment of the succeeding end. On this basis the first, or proximate, end of the state is government and liberty. The state must maintain

[1] The Theory of the State, p. 320. [2] Principien der Politik, pp. 219 ff.
[3] Political Science and Constitutional Law, Vol. I, pp. 85–89.

peace and law, even if in doing so it crushes both individual freedom and national genius. However, as soon as the disposition to obey law and observe order is established, the state must mark off a sphere of individual liberty, and must, from time to time, readjust the relation of government to liberty, widening the latter as civilization advances. The secondary aim, growing out of the first, is the perfecting of nationality, — the development of the popular genius. For this purpose national states, resting on natural physical and ethnic foundations, are the best instruments. The final aim is the perfecting of humanity, — the civilization of the world. In a universal world-state human reason, perfectly developed, would attain to universal command. The ends of the state, in historical order, would thus be "first, the organization of government and of liberty, so as to give the highest possible power to the government consistent with the highest possible freedom to the individual; to the end, secondly, that the national genius of the different states may be developed and perfected and made objective in customs, laws, and institutions; from the standpoints furnished by which, finally, the world's civilization may be surveyed upon all sides, mapped out, traversed, made known, and realized."

138. The activities of the state. Whatever may be the philosophic basis upon which the state rests or the ultimate ends of its existence, the question at present of paramount importance concerns the proper sphere of its operation. This includes the nature of the functions for whose performance the state is essentially fitted; and the aims which, under given conditions of civilization, are desirable and practicably attainable. Obviously, changing social conditions and tendencies cause corresponding changes in ideas concerning the proper scope of state activities. The functions of the state in the agricultural régime of feudalism were quite different from those demanded by modern industrial conditions. Besides, the growth of political consciousness and the widening of democracy have created new concepts as to the desirability of state action and the possibility of social reform. Governmental activity, opposed by popular opinion when the majority of the people have no voice in government, may be enthusiastically favored when the government is under popular control.

But, however the methods of state functioning or the objects of governmental regulation may differ from time to time, the question in last analysis reduces itself to a statement of the proper relation of state to individual. Every exercise of power by the state is a corresponding limitation on the freedom of its citizens, and the proper scope of state activities can be secured only by a careful balancing of social and individual interests. This adjustment has always been the fundamental political problem, and the leading views as to its proper solution may be roughly classified as :[1]

1. *Anarchistic*. This view, the logical extreme of individualism, considers government an unnecessary evil. It would abolish the collective authority of the state, replacing it by individual freedom modified only by voluntarily set limits. It would expect voluntary associations to secure general improvements, protect lives and property, and coerce individuals that are dangerous to justice and order. The difficulties inherent in such a system — the lack of liberty on the part of those coerced, and the need for some authority to determine for what purposes and to what extent these voluntary associations should act — are evident. Because of the illogical basis on which the anarchistic theory rests, and because of the small part it plays in the beliefs and actions of most persons, it needs no further discussion.

2. *Individualistic*. This theory considers the state an evil, necessary only because of the imperfections of mankind. Its sole duty is to protect the life, liberty, and property of individuals from violence or fraud. The state is therefore justified in interference only for the purpose of protecting its citizens against worse interference on the part of other citizens, and is not justified in further activity, even for purposes admittedly beneficial. This view is frequently accompanied by the belief that, as the sense of order and morality becomes more perfect, the need for state action will diminish, and that the ideal condition would be that in which the state no longer exists because no longer needed. Since this doctrine until recently played a large part in political theory and, in a modified form, still underlies the political thinking of many persons, it will be further considered in a following section.[2]

[1] Willoughby, The Nature of the State, pp. 318 ff. [2] See section 139.

3. *General welfare.* This view underlies the actual operation of government in modern states. It considers the state as society organized, and as justified not only in maintaining its own existence and the life, liberty, and property of its citizens, but also in undertaking such other functions as, under existing conditions, may be conducive to general welfare. It also recognizes that a most important duty of the state is to create and safeguard a wide sphere of individual liberty from governmental or private interference. It thus rests on an individualistic basis, but is greatly modified by utilitarian and opportunistic considerations. In actual operation it may dictate policies of action varying from the limited interference of individualism to the extreme interference of socialism, but in the exercise of each function its decision must rest upon the utilitarian basis of the best interests of the individual and of society. The actual functions that modern states consider it essential and desirable to perform will be considered in a later chapter.[1]

4. *Socialistic.* This theory, or the group of theories that may be classed under this head, aims to substitute for the present individualistic society a coöperative commonwealth, controlling all the means of production and regulating distribution according to some method of joint control. It is an extension of the general-welfare doctrine to cover many points that present states leave to private initiative, believing that state action, if made more extensive, can remedy the injustice and wastefulness of modern industrial life. Because its principles contain certain essential truths, have influenced governmental action in a marked degree, and are spreading in the minds of many persons, socialism, as to its theoretic basis and as a force in present politics, will be considered in later sections.[2]

139. Individualism. The individualist doctrine, opposing governmental action except for the mere preservation of life, liberty, and property, was particularly powerful during the latter half of the eighteenth and the first half of the nineteenth century. It assumed different aspects according as it was viewed from (1) ethical, (2) economic, or (3) scientific points of view; but from all of them arguments favoring freedom of individual action were drawn.[3]

[1] See Chapter XXV. [2] See sections 140, 141.
[3] Leacock, Elements of Political Science, Part III, chap. i.

1. In the writings of the political philosophers of the Natural Rights School strong statements of the desirability of non-interference and of the right of individuals to be let alone are found. Kant, Fichte, and von Humboldt in Germany, Rousseau in France, Hume and Locke in England, and Jefferson, Madison, and Paine in America[1] are representative leaders of that belief in individual freedom that accompanied the rise of popular sovereignty. As stated by von Humboldt, "the aim of the state should be the development of the powers of all its single citizens in their perfect individuality; that it must therefore pursue no other object than that which they cannot pursue of themselves, viz., security."[2]

The fallacies inherent in the social-contract and natural-rights doctrines, from which individualism was deduced, have been already pointed out.[3] Besides, individualism, if carried out logically, would be an impossible ideal which no state has yet been willing to try, and which would result in the total destruction of social control. Even when state action is limited to the protection of life, liberty, and property, such action necessitates some interference and must rest on a utilitarian basis; and even individualists themselves admit the desirability of governmental action in education, in care for the poor and helpless, and in the maintenance of coinage and the postal service, none of which is strictly included under their formula.

2. Individualism, as an economic principle, is based on the grounds that free competition and unrestricted industry and commerce are more profitable than economic activities under governmental regulation and control. This *laissez-faire* doctrine arose in England at the time of the Industrial Revolution, when large-scale machine production was replacing the restricted "domestic system," and when transportation and commerce were undergoing rapid changes. As a result the existing system of government regulation in England grew steadily out of harmony with the new conditions and with England's economic interests. In the "Wealth of Nations" (1776) of Adam Smith, followed by the teachings of other economists in England and on the continent, it was pointed

[1] Merriam, American Political Theories, chaps. ii–iv.
[2] Quoted by Willoughby, The Nature of the State, p. 323. [3] See section 42.

out that if each individual were left free to pursue his own interests the welfare of all would be best secured; that free movement of capital and labor, free adjustment of prices on the basis of demand and supply, and free movement of trade from place to place would lead to the best economic adjustment; and that governmental interference in industry prevented the proper working out of natural laws. In England these doctrines led to the repeal of many statutes regulating labor, industry, and commerce, and gave an impetus during the middle of the nineteenth century to the free-trade movement in Europe and America. More recently the evils growing out of unrestricted competition, the obvious advantages of combination and the need for its regulation, and the possibilities of public effort have led to the assumption by the state of certain economic functions and to the regulation of many others. The present attitude of the state toward industry will be discussed in the following chapter.[1]

3. On a scientific basis individualism has been argued as a corollary of the biologic doctrine of evolution. This is especially the case in the writings of Herbert Spencer, who looked upon governmental action as unwise interference with the working out of "the survival of the fittest," and who wished to limit government, as one of the "organs" of society, to the performance of its specific functions alone. Accordingly Spencer considered government a necessary evil, whose activities will diminish in scope as civilization develops; and he further tried to prove that all extensions of governmental action in the past have been followed by injurious results.

In applying the biologic analogy upholders of individualism fail to consider the essential difference between mankind and the lower forms of life. While the latter are at the mercy of their environment and are transformed by it, man transforms his environment and can thus remove the great waste that the process of natural selection otherwise necessitates. Besides, since the survival of the "fittest" means only the fittest under given circumstances, and not necessarily the survival of the best, man, by improving those circumstances, can make the fittest a far more

[1] See section 144.

desirable product. Hence collective activity, instead of being an interference with a beneficent law, may remove the waste of competition, hasten progress, and make possible a higher type of individual and of society.

In conclusion, the postulates of individualism may be stated as follows: [1]

1. That self-interest is a universal principle in human nature.

2. That, in the long run, each individual knows his own interests best, and, in the absence of arbitrary restrictions, is sure to follow them.

3. That, in the absence of external restraint, free competition can and does exist.

4. That such free competition always develops the highest human possibilities, by enabling each individual to do that for which he is best fitted, by eliminating unfit elements, and thus most surely advancing the welfare of all.

These may be criticized in order:

1. Altruism as well as self-interest is a motive in human action.

2. In some cases, for instance in compulsory education, sanitation, labor laws, etc., the persons concerned do not know their own interests and must be protected by the collective action of others.

3. Competition does not persist unless the competitors are comparatively equal in strength. Frequently governmental interference, by assisting the weaker party, makes competition possible instead of destroying it.

4. As already indicated, the law of the survival of the fittest, when applied to human society, is wasteful, slow, and often ineffective. Collective activity may prevent its action when undesirable, or may bring it into operation if some impeding cause has interfered.

The principle of noninterference, at present, is not in favor as a theory, nor does it form, under modern conditions, a satisfactory basis for state functions. "Its adoption, in complete form, runs counter to the most instinctive impulses of humanity and would neglect governmental duties of the most evident character. As a matter of political justice it rests on a mechanical attempt to

[1] Willoughby, The Nature of the State, pp. 326 ff.

completely divorce individual and social rights. On an economic basis it overlooks the plain advantages of coöperation and regulated effort. As a scientific law it will not stand examination." [1]

140. Socialism. Socialism, the most radical ideal of governmental activity, would transfer to the state control over land and the means of production and would limit private property to consumption goods alone. The state would thus manage all industrial enterprises and would replace private initiative and competition by state control through managers and laborers employed, paid, and directed by governmental departments.

Revolutionary socialists anticipate a general uprising of the masses, who will establish a socialistic state by overthrowing or securing control of existing governments and confiscating property in private hands. Other less radical socialists believe that this revolution will take place voluntarily, approved by all because of the increasing evils of the present system. The majority of intelligent socialists look forward to socialism as an ideal to be realized by gradually extending governmental functions and by increasing public control over great industrial combinations.

Socialists differ also in the details of their proposed organization, especially in the method of distributing income among the members of a socialistic state. Some believe that, under the economies and improved production of socialism, distribution would present no difficulties because of the abundance of wealth. Others recommend that everything should be held in common, each producing according to his capacity and receiving according to his needs. Another group advocates equality of wages, sometimes with the proviso that all persons perform equal amounts of labor, according to a system of units of labor-time, based on the attractiveness or repulsiveness of the occupation. The plan upheld by the majority of socialists bases wages on efficiency. Production, as a department of government, would be controlled by elected officials, who would manage all industry, assign laborers to their duties, and arrange wages and promotions.

Among the advantages claimed for socialism are that it will remedy the injustice, wastefulness, and haphazard methods of

[1] Leacock, Elements of Political Science, p. 369.

present industry, and will replace self-interest as the leading motive of human action by a broad, altruistic desire for social usefulness. Socialists claim that, under private ownership of land and the increasing use of machinery and combination of capital, the laborer, unable to apply himself directly to the means of production, must make a forced bargain with landlord or capitalist; that under this system the laborer receives far less than his proper share of the product, landlords and capitalists receiving enormous rents and profits; and that as population increases and the present system of industry is further developed, the gulf between capitalists and laborers will widen, causing finally the overthrow of the existing system and the establishment of a socialistic state.[1]

In pointing out the economic advantages of their system socialists claim that "the economic needs of the community will be accurately estimated and the available land, labor, and capital carefully apportioned, so that just the quantity of each kind of goods required will be produced. The duplication of plants and the excessive production of particular goods, now so common, will be avoided, the expenses of advertising and competitive selling will be saved, and, finally, the production of goods that are harmful rather than beneficial to those who consume them will be suspended."[2] As a result, the saving in productive power may be applied either to increase the amount of goods produced, or to shorten the hours of labor, or both. From a moral standpoint it is plain that "instead of depending upon self-interest as a spur to industrial activity, socialism relies upon the love of activity for its own sake, the desire to contribute to the common good, the sense of duty in the performance of tasks that are largely voluntary, and the ambition to win social esteem and social distinction through conspicuous social service.[3]"

Without discussing the economic fallacy into which socialists are led in ascribing an undue share of production to labor alone,[4] some of the practical objections to the system may be pointed out:

[1] See Karl Marx, Capital.

[2] Seager, Introduction to Economics, p. 525. [3] Ibid., p. 525.

[4] For a discussion of wages see Seligman, Principles of Economics, chap. xxvi; Seager, Introduction to Economics, chap. xiii.

1. The difficulties of administration would be enormous. Such questions as the apportionment of laborers among the various departments of industry, the assignment of values to products and to labor, the quantity of goods to be produced, the relative proportion of capital goods and consumers' goods, and the distribution of income, — all of which are now regulated, imperfectly to be sure, by the law of demand and supply, — are complex problems whose artificial adjustment would require administrative ability of the highest order.

2. Serious dangers would arise because of the opportunities for corruption, intrigue, and personal spite. Against the power of "bosses," in a socialistic state, there would be little possibility of resistance and little chance of fair play. The connection at present existing between business and politics is the source of many evils in government; strengthening that connection until they become practically identical would, under present moral conditions, scarcely tend toward improvement.

3. It is denied that socialism is favorable to progress. If the incentive of competition and the hope of reward were removed, experiments and improvements would be retarded, individual initiative would be checked, and, in attempting to remove inequalities, there would be danger of reducing life to the dull uniformity of stagnation.

4. Socialists are inclined to be too optimistic in underrating the psychological obstacles to their plan. The average man is neither so inclined to work nor so zealous for common welfare as socialism demands. Neither is the sense of duty sufficiently developed, nor public opinion, on which social esteem must depend, sufficiently discriminating to obviate the necessity of compulsion. When mankind is morally perfected to the point that socialism demands, it will make little difference what form of organization is adopted.

141. Socialism in present politics. Except in a few small and scattered communities no attempts to apply the principles of socialism to their full extent have been made. At the same time the evils pointed out by socialism are becoming generally recognized, a stronger feeling of social responsibility is replacing the individualism of the last century, and many socialist doctrines have

been given practical application by modern states, especially in the form of government operation and regulation of industry. In addition, socialist political parties have become forces in actual government. In continental states, where party groups are numerous, they often hold the balance of power, and they have recently become of some importance in England and in the United States.[1]

Socialism as a political movement took first a revolutionary form, aiming at the immediate overthrow of the system of capitalism. Such was the purpose of the socialists who took an active part in the revolutions of 1848 in France, Germany, and elsewhere. But after the failure of that movement, a realization of the difficulties of social improvement led rather to attempts at constitutional methods of securing practical reforms.

In Germany this movement had its origin and has reached its greatest strength. In 1863, largely through the influence of Ferdinand Lassalle, a General Workingmen's Association was organized, and in 1867 the German Social Democrats entered on their first electoral campaign. Schisms within the ranks of this organization and the rise of a new and more orthodox socialist party in 1869 led to a feud that was terminated in 1875 by the amalgamation of the various organizations, giving birth to the present Social Democratic party. In spite of repressive legislation, which was enacted in 1878, after two attempts on the emperor's life, and which remained in force until 1890, the progress of the socialist movement has been rapid. A number of reforms, such as universal suffrage by ballot, direct legislation, freedom of the press and of meeting, proportional representation, a graduated income tax, factory and labor legislation, and the substitution of militia for the standing army, were outlined by the Erfurt Congress (1891)[2] and form the present platform of the party. In the parliamentary elections of 1906 more than three and one-quarter million socialist votes were cast, sending forty-three members to the *Reichstag*.[3] The Social Democratic party is to-day, numerically, one of the strongest political organizations in the country. In the

[1] Hillquit, Socialism in Theory and Practice, Part I, chap. vi, and Appendix.
[2] See Ely, Socialism and Social Reform, Appendix I.
[3] In the preceding *Reichstag* the socialists controlled eighty-one members.

elections of 1920 the Majority Socialists, in control of the government, cast over four and one-half million votes, although they lost relatively to both the reactionary and the revolutionary groups.

Socialism in France has had a confusing development, progressing through a succession of divisions and fusions. After the fall of the Paris Commune in 1871 socialism was dormant, — persecuted by the government, — though growing in favor among the laboring classes. About 1880 one branch of organized labor declared in favor of socialism. Two years later this group was further split into the strict adherents of Marxian socialism and the Possibilists, who were willing to accept gradual reforms and to coöperate with the government. Further divisions and the formation of independent groups led to efforts at union which partially succeeded in 1900. The acceptance of a cabinet portfolio by Millerand, an independent socialist, following the Dreyfus agitation, led to a new division between the orthodox socialists, who disliked coöperation with the government, and the "Opportunists," who approved it. In 1905 the leading wings again united, although there are still numerous independent groups, as well as considerable difference of opinion as to whether socialism should aim at centralized governmental control, or should extend its already strong authority over the municipalities. The socialist parliamentary vote in 1906 was over one million, and gave the party seventy-six members in the Chamber of Deputies.

In Austria the socialists polled over one million votes in the parliamentary election of 1907 and elected eighty-seven deputies to the *Reichsrath*. In Belgium, where the socialists aim to secure universal suffrage, they polled about five hundred thousand votes in 1908 and elected thirty-three members to the legislature. In Italy the socialists, though divided into groups on questions of policy and method, are exceptionally strong. In 1907 they had twenty-five representatives in the Chamber of Deputies and controlled almost one hundred municipalities.

In England socialism has had a slow and uneventful growth. The Social Democratic Federation, organized in 1881, is the orthodox representative of socialism; the Fabian Society, founded in 1883, has carried on educational propaganda for socialism and

has achieved notable municipal reforms; the Independent Labor party, founded in 1893, represents somewhat broader views and lays greater emphasis on the political aspects of socialism. These groups, together with the trades unions that they have been active in establishing, constitute the Labor party, with a voting strength of about three hundred thousand and with thirty-two representatives in the House of Commons (1909).

In the United States socialism took first the form of Utopian communistic experiments, none of which, in spite of adherents of national reputation, was long successful. About 1868 numerous local socialist organizations were established, but these rapidly went to pieces after the industrial crisis of 1873. The first national socialist party was organized in 1874, finally taking the name of the Socialist Labor party of North America, and in 1892 nominating a presidential ticket. For a long time its growth was slow, its supporters being in the main foreign workingmen. More recently the Socialist party, absorbing the greater part of the former Socialist Labor party, has attained considerable strength. At present (1910) it has about thirty-two hundred local organizations, with an active membership of fifty thousand, and in the presidential election of 1908 polled a vote of over four hundred thousand. Socialists have no representation in the United States Congress, but they control seats in several commonwealth legislatures and municipal councils. Their activities are chiefly directed toward securing practical reforms in legislation and administration.

One of the results of the work of Marx, Engels, and other socialists, and of the strong labor movement of the middle of the last century, was the formation in 1864 of the International Workingmen's Association, or, as it is usually called, the International. This movement extended over the greater part of Europe and included Australia and the United States. From 1864 to 1872 it held six conventions, devoted mainly to discussions of social and labor problems. This movement was discredited because of its support of the Paris Commune after the Franco-Prussian War, and because of the growing spirit of anarchism among its members. Consequently, in 1872, the seat of its general council was transferred to New York, and in 1876 the International was formally dissolved.

Since 1889 international socialist and labor conferences have again been held at intervals of two to four years, the Stuttgart Congress of 1907 being attended by about one thousand delegates, representing twenty-five different countries. The Paris Congress of 1900 established a permanent International Socialist Bureau, composed of two representatives from each affiliated country. This bureau is the executive committee of the international congresses and has its headquarters and permanent secretary in Brussels.

It is unquestionably true that numerous reforms in social legislation have been either the direct work of socialism in politics, the indirect results of its influence, or concessions to its strength. Workingmen's insurance, factory laws, industrial courts, the civil code, protective tariffs, taxation, and extended suffrage have all been affected by the efforts of its adherents. However, it has been in the local divisions, especially in municipalities, that socialism has achieved its greatest triumphs. In France particularly, where, in 1904, one wing of the socialist party had full control of the administration of sixty-three municipalities, also in Italy, Belgium, Austria, Norway, Denmark, and to a less degree in Sweden, England, and the United States, socialists have put into practical application their administrative theories. Care of the poor, especially of children, extension of education, improved sanitation, popular concerts, lectures, and theaters are among their activities, together with the regulation or municipal operation of public utilities, such as water, light, transportation, and communication.

OUTLINE OF CHAPTER XXV

REFERENCES

CLASSIFICATION OF GOVERNMENTAL FUNCTIONS

1. ESSENTIAL FUNCTIONS
   - *a.* Power
   - *b.* Liberty
2. OPTIONAL FUNCTIONS
   - *a.* Nonsocialistic
   - *b.* Socialistic

ESSENTIAL FUNCTIONS

1. GOVERNMENTAL
   - *a.* Foreign relations
   - *b.* Internal legislation and administration
2. FINANCIAL
3. MILITARY

OPTIONAL FUNCTIONS

1. STATE MANAGEMENT OF INDUSTRY
   - *a.* Fiscal monopolies
   - *b.* Social monopolies
2. REGULATION OF TRADE AND INDUSTRY
   - *a.* Trust regulation
   - *b.* Railroad regulation
   - *c.* The tariff
3. REGULATION OF LABOR
   - *a.* Conditions of employment
   - *b.* Conditions of remuneration
   - *c.* Results of employment
4. EDUCATION
5. CARE OF THE POOR AND INCAPABLE
6. SANITATION AND HEALTH

CHAPTER XXV

THE FUNCTIONS OF GOVERNMENT

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142. Classification of governmental functions. Turning from the theoretical questions of the purpose for which the state exists and the functions that it may properly perform, to a study of modern states in actual operation, one finds a remarkable agreement in the general nature of governmental activities. In their dealings with one another states follow a recognized code; in the internal administration of all states the same chief departments are found; legal principles, modes of procedure in legislation and administration, and the problems that governments are called upon to solve, are in most respects similar.

All states, while potentially capable of exercising the full measure of their sovereign powers, realize the importance of guaranteeing a field of individual liberty against governmental encroachment. Accordingly they place constitutional restrictions upon the unlimited exercise of sovereignty, although in time of war, or even

in time of peace, through the exercise of the police power with its resultant powers of taxation and eminent domain, the state has a legal basis for extending its activities if needful for the safety and welfare of its people.

Again, all the leading states are organized on an individualistic basis. In no state is there common property in the means of production, nor are equal wages nor universal employment guaranteed by any government. At the same time there is evident a strong reaction against the extreme principles of individualism. Modern governments are entering upon a constantly widening sphere of activities, especially in connection with industry. Government ownership and management of various kinds of business, government regulation of commerce, manufacture, and prices, and government interference on behalf of the laboring class are the most important examples of this tendency. Besides, modern states are undertaking many functions for the general welfare of their citizens, each state deciding, in accordance with existing conditions, whether the advantages derived from public control will more than compensate for the possible weakening of the self-reliance of its people, for the encroachment upon their personal freedom, for the danger of corrupt influences in government, and for the creating of precedents for the assumption of activities by the state that will be detrimental to the general interest.[1]

A further analysis shows that the functions exercised by governments in leading modern states may be broadly classified under two heads:

1. *Essential functions.* "It is admitted by all that the state should possess powers sufficiently extensive for the maintenance of its own continued existence against foreign interference, to provide the means whereby its national life may be preserved and developed, and to maintain internal order, including the protection of life, liberty, and property. These have been designated the essential functions of the state, and are such as must be possessed by a state, whatever its form."[2] These functions are determined by the threefold relations of state to state, of state to citizen, and of citizen to citizen. The state must determine its relations to

[1] Willoughby, The Nature of the State, p. 338. [2] Ibid., p. 310.

other states in peace and in war; it must determine its relation to its own citizens as to their share in political power, their freedom from governmental interference, and their actions that are dangerous to state existence; and it must regulate the dealings of its citizens with one another so as to secure order and justice. In carrying out these functions the maintenance of army, navy, and a large number of officials, the raising and expenditure of vast sums of money, and the exercise of extensive and varied powers are necessary.

A closer examination of the essential functions of the state shows that they follow naturally from the definition of the state and from its essential attribute — sovereignty. Consequently they must adjust the relation of sovereignty, in its external aspect, to other states, and, in its internal aspect, to individual liberty. These functions are therefore concerned with the sovereignty of the state in its two aspects of:

(a) Power. These include the diplomatic and military relations of a state to other states, the maintenance of state existence by the rights of taxation and eminent domain, and the maintenance of order and security by means of the police service and the criminal law. These functions emphasize the *authority* of the *state*.

(b) Liberty. These include the determination of the rights of citizens to share in governing, the education of citizens in political methods, and improvements in state organization and administration. On its negative side it includes a guarantee, within a certain field, against interference on the part of either government or individual, maintained by the laws and the courts. These functions emphasize the *political* and *civil liberty* of the *individual*.

2. *Optional functions*. These are exercised not because they are essential to the existence of the state and the maintenance of its power, or to the liberty and security of its citizens, but because they are expected to promote general welfare morally, intellectually, or economically. While optional, they are at the present time of great importance, in many cases the boundary line separating them from the essential functions being extremely difficult to determine. They include activities which, if left to individuals, would be either inefficiently or unjustly performed or not performed at all. Accordingly they may be subdivided into:

(a) Nonsocialistic. These are functions which, if not assumed by the state, would not be undertaken at all. The activity of the state in this field does, therefore, not limit or interfere with private enterprise. Under this head come care of the poor and incapable, maintenance of public parks and libraries, sanitation, certain forms of education, and the large amount of investigating and statistical work the purpose of which is to improve the environment and give information by which further improvement may be made.

(b) Socialistic. These are functions that admit of private initiative, but are frequently taken over, wholly or in part, by the state, either for the purpose of preventing the evils of private control or because they can be more effectively managed by governmental authority. Examples are state ownership and operation of railroads or telegraph lines, and municipal control of water, gas, and electric light. Regulation of labor and prices partakes of the nature of both socialistic and nonsocialistic functions.

It may be noted that because of the different conditions that prevail in modern states, enterprises that in some states are socialistic may be nonsocialistic in others. For example, it was found commercially impossible to have railroads built by private initiative in Italy. Accordingly their construction and operation by the government was not socialistic, since they were not taken out of the hands of private enterprise.

143. Essential functions. Every state finds it necessary to maintain social order, to provide for the protection of person and property, to fix the legal relations of the family, to regulate the holding, transmission, and interchange of property, to determine contract rights and the liability for debt, to define and punish crime, and to administer justice in civil cases. Besides, the state must determine the political duties, privileges, and relations of its citizens, and must preserve its life and maintain its political relationship with foreign powers.[1]

These essential functions of the state, in so far as they are concerned with foreign relations or with the general legislative, judicial, and administrative regulation of the activities of individuals, have been discussed in preceding chapters.[2] There are, however,

[1] Wilson, The State, pp. 613–614. [2] See Chapters XI–XII, XVIII–XXIII.

two branches of administration common to all states, that demand additional attention. These are the activities of the state concerned with financial and military affairs. In order that the government may perform its duties it must have pecuniary means. In case of attempts made against its existence or power by other states, or against its peace and order by its own citizens, an army and usually a navy are demanded. Financial and military functions are therefore essential to the state, both in its dealings with other states and in its relation to its own inhabitants. A brief statement of the leading features of these important governmental activities follows:

1. *Financial functions.* The evolution of taxation shows the various phases through which social and political organization has passed.[1] The primitive state, whose chief activity was war, demanded of its citizens military service, and developed regulations as to the equipment and supplies to be furnished. The treasury of the state was identical with the wealth of the chief or king, and was maintained by gifts or tribute, by the yields from conquered lands, or by raids on neighboring peoples. As the internal activities of the state increased, service in time of peace was also demanded, and forced labor or a percentage on flocks and harvests furnished the needed income. As wealth increased, personal services were usually commuted for some form of payment. Taxation of produce was changed to a money payment on the land itself; and, as manufactures and commerce grew, various kinds of movables were also compelled to contribute their share. In addition, large sums were raised by irregular means, such as forced loans, confiscation, and exorbitant fees. The sale of offices or of monopolies and the debasement of the coinage were also common. As economic conditions changed, new forms of taxation became possible. In addition to the poll tax and to taxes on incomes and inheritances, all of which have been in use for a long time, taxes have been laid on the manufacture of goods, on the privilege of carrying on certain kinds of business, on special business transactions, and on goods sent out or brought into a state. More recently corporation and franchise taxes have furnished large incomes.

[1] Dealey, The Development of the State, pp. 65–69.

The method of levying taxes has also undergone significant change. The tyrannical power of officials who "farmed" or leased the right to collect the taxes, and the burdensome feudal obligations of the Middle Ages are now replaced by systems of assessment and collection by responsible governmental officials. Several forms of taxation, because of their effects on private enterprise, shade off into the optional functions of the state and will be discussed more fully in a later section.[1] Of such nature are tariffs, when levied for the purpose of protecting home manufactures as well as for revenue; and licenses, whose aim is to regulate the manufacture or sale of commodities such as alcoholic liquors or foodstuffs.

Other financial functions of the state include the maintenance of coinage and currency; the administration of public property, such as public lands or forests, public buildings, and munitions of war; state monopolies, such as the postal service and, in some states, railroads and telegraphs, or certain commodities, such as tobacco and salt. The management of the public debt is an allied function.

The financial situation (1920) in the national governments of leading modern states may be briefly outlined as follows:

(a) France. The annual national income is twenty-two billion francs and the annual expenditure is almost thirty billion francs. Revenue is derived mainly from direct and indirect taxes, customs, state monopolies, tax on unearned incomes, and the sugar tax. More than half of all expenditure goes to pay charges on the national debt; war, navy, posts and telegraphs, education, public works, and civil service are the other most important items. The national debt has grown from about forty billion francs in 1914 to two hundred and eighty-five billion francs in 1920.

(b) Germany. Revenues and expenditures in the ordinary budget average about forty billion marks each. The extraordinary budget provides for revenue of two and a quarter billion marks and expenditure of fifty-two billion marks. Income is derived mainly from direct and indirect taxes, the taxing power of the national government in the present republic being considerably

[1] See section 144.

more extensive than was the case in the former empire. The chief expenditures are for debt, pensions, civil service, and army. The national debt increased from twelve billion marks in 1915 to three hundred billion marks in 1920.

(c) Great Britain. Revenues and expenditures each average about one and one-quarter billion pounds annually. The chief sources of revenue are customs, excises, property and income taxes, estate and stamp duties, and income from posts and telegraphs. The national debt, civil service, and army and navy are the chief items of expenditure. The national debt is almost eight billion pounds, partly offset by debts owed to England by states to whom she made loans during the war. The annual cost of the national debt is over three hundred million pounds.

(d) The United States. Ordinary revenues and expenditures each average about five billion dollars annually. The chief sources of income are customs, internal revenue, and postal service. Since the Constitution of the United States provides that direct taxation at the hands of the federal government must be levied in proportion to population,[1] and that it must be apportioned among the commonwealths "according to their respective numbers,"[2] the inequitable distribution that would result from these restrictions is so evident that the federal government is practically limited to indirect taxation. The federal corporation tax and the recently adopted constitutional amendment permitting the levy of an income tax are attempts to extend national control over direct taxation. On the other hand, since the commonwealths are forbidden to levy import duties,[3] and since commonwealth taxation on goods manufactured within their jurisdiction would tend to drive such industries to other commonwealths, and since taxation on goods manufactured elsewhere would probably be considered interference with interstate commerce, the commonwealths and local governments are practically limited to direct taxation. The chief expenditures are for the national debt, army and navy, civil service, postal service, and pensions. The national debt is about twenty-four billion dollars, most of which was incurred in the form of bonds issued during the recent World War.

[1] Article I, section 9. [2] Article I, section 2. [3] Article I, section 10.

It must be remembered that in all these states local and colonial finance is of great importance, revenues being derived mainly from direct taxation and expended for purposes of general welfare. Especially in federal states, such as Germany and the United States, many functions are performed by the commonwealths rather than by the national governments.

In adjusting expenditures to revenue several systems are in use:

(a) In despotic states the government takes all that it can without crippling the resources of the country so seriously that future taxes would be impossible. The revenues thus raised are spent at the will of persons irresponsible to the people.

(b) In most of the democratic states the budget of necessary expenditures is calculated and the probable income from ordinary revenues estimated. The difference is then adjusted by increasing or diminishing some small elastic tax.

(c) In the United States federal government, whose income is derived largely from tariff on imports and from excises on commodities of internal production, the national revenue cannot be accurately foretold, since it fluctuates according to the prosperity of the country. Besides, these taxes are not elastic, since they are changed only after lengthy deliberation by Congress. Consequently there is little direct relation between revenue and the needs of the government, and money is spent to balance the revenue, whatever it may happen to be.

2. *Military functions.* War was the chief function of early states, their greatness depending in the main on their military strength. All citizens were soldiers, although their training and equipment were largely matters of private concern, and their provisions and pay were secured by plunder and conquest. At the present time, war, though an exceptional activity of the state, is still important; and military preparation, largely a matter of technical training and material equipment, is carried on extensively and by the state alone. In addition to armies, all important states possess navies; and modern warfare is determined largely by the outcome of war at sea and by the ability to maintain the financial burdens that modern warfare entails. Ordinarily both armies and navies are considered safeguards of peace rather than direct challenges

to war; armies being used to maintain internal order, and navies to protect commerce and colonies. States whose frontiers are exposed or who are surrounded by hostile neighbors, making war always imminent, give all men military training and constantly keep a large number ready for immediate service. Such was the case in France and Germany, where military service was compulsory, where standing armies numbering hundreds of thousands of men were constantly under arms, and where all able-bodied men formed a military reserve in case of need. In states such as Great Britain and the United States, whose geographic position makes invasion difficult, military service is not compulsory. Volunteers are depended upon except in the greatest wars, and a small standing army is maintained for purposes of internal administration and as the nucleus for a volunteer army if war should occur.

On the other hand, states isolated by the sea, or possessing scattered colonies or extensive commerce, aim to maintain large navies. Great Britain until recently considered it essential that her naval strength be greater than that of any other two states; while the United States, Germany, France, and Japan vied with one another in the size and efficiency of their naval armaments. All states spend immense sums in building military works and naval stations, and in accumulating munitions of war. Schools for training military and naval officers are established, pensions furnished to disabled veterans, and experiments in improved methods of destruction encouraged.

In all the leading states a large proportion of national income is expended on the army and navy. Even in the United States, where the danger of war is comparatively remote, three fourths of the expenditure of the federal government is needed for army, navy, and pensions. If to this be added the cost of the expensive and ineffective "state militia," the proportions of the military function, even in a peaceful industrial state, will be evident.

144. Optional functions. It is evident that functions undertaken for general-welfare purposes vary in different states and at different periods. In some respects modern states have limited the scope of their activities. The private life of individuals and their intellectual and religious beliefs are seldom interfered with, and the

family and the church, once merged in the state, are now separate institutions. Even these, however, are legally subordinate to the state, and some of their most important powers have been transferred to it. Marriage and divorce are civil functions, rights of kinship and inheritance are regulated by law, and in the case of parental neglect or orphanage the state undertakes the care of children. Similarly, the state dispenses charity, regulates morals and amusements, provides education and undertakes scientific investigation, — all of which were at one time under the control of the church.

The development of modern industrial conditions has made the state particularly important both as a conservative and as a constructive agent. As industrial society becomes more complex and interdependent, general welfare demands that the interests of the individual be increasingly subordinated to those of the community. This tendency is aided by the growing confidence of mankind in its ability to improve its environment and reform its institutions, and by the democratic basis of the state, as a result of which its action is welcomed rather than opposed or regarded with suspicion. States have worked out fairly well their external relations and the political status of their citizens. The wars and revolutions of the past century have been replaced by intense interest in economic matters; commercial relations form the subjects of most treaties; and legislatures are concerned with the problems of tariffs, corporations, and currency.

The following are some of the most important functions that modern states, in varying degrees, deem it advisable to undertake:

1. *State management of industry.* Governments may enter upon business enterprises for the purpose of securing revenue or for general social reasons. Accordingly government monopolies may be divided into:

(a) Fiscal monopolies. Certain articles of wide consumption easily lend themselves to a form of taxation if operated by states for profit. Other commodities may be monopolized for the purpose of regulating their use. Examples of fiscal monopolies in modern states are tobacco, matches, and gunpowder in France, salt in Saxony, opium in some of the Eastern countries, and spirits

in Russia and Switzerland. Lotteries, formerly common, survive in some states.

(b) Social monopolies. These enterprises are undertaken by states because of their public importance. At first in private hands, they have gradually come under government regulation, and at present in many states they are under governmental management. Sometimes they are managed for profit, sometimes fees are charged to cover expenses, and sometimes the service is free, the expenses being covered by general taxation. Existing examples of government ownership, some of which are undertaken by national and others by local organs, may be classified under the following heads:[1]

(1) Transfer of values, — coinage, currency, and banking.

(2) Transfer of products, — markets, docks, and piers.

(3) Transmission of intelligence, — post office, telegraph, and telephone.

(4) Transportation of persons and commodities, — roads, canals, ferries, bridges, railroads, and express companies.

(5) Transmission of utilities and power, — water works, gas and electric-light works, electric-power works, steam-heat and hot-water lines, irrigation and power canals.

In some states the peculiar public importance of certain functions or the inability of individuals to conduct them may lead to public management of activities usually in private hands; in other states the magnitude of certain interests, with resultant danger of inefficiency or of political corruption, may be sufficient reason to prevent government ownership. The success of public management of railways in Prussia is not sufficient reason for the assumption of that function by the government of the United States.

2. *Regulation of trade and industry.* In addition to regulations for the benefit of consumers, safeguarding health by food inspection and quarantine regulation, and for the benefit of producers by means of so-called labor laws, governments protect investors by regulating banks, trust companies, and insurance, and by defining and enforcing the obligations of officers of corporations. Modern states fix standards of weights and measures, license trades and businesses, and regulate navigation. Inventors and authors are

[1] Seligman, Principles of Economics, p. 564.

protected by patent and copyright laws, and certain industries are aided by bounties and subsidies. Shipping subsidies, partly for the purpose of developing a merchant marine and partly for auxiliary naval purposes, are paid by Great Britain, Germany, France, and Japan. In the United States, postal subsidies alone are given, but in other states additional subsidies for tonnage and even for construction have been granted.

The most important governmental regulations of industry are undertaken in behalf of the general public welfare, and deal with trusts, railroads, and the tariff. These will be considered in order:

(a) Trust regulation. In the régime of small-scale production and competition prices were automatically regulated by demand and supply. Present methods of large-scale machine production and the immense accumulations of capital by means of joint-stock companies have made it difficult for small concerns to maintain successful competition, and have made possible a monopoly control of certain commodities, in some cases including articles of prime necessity, at the hands of large industrial corporations. In such cases prices may be fixed at the point of highest net returns, and the interests of the public may suffer. In addition, the evils of speculation and overcapitalization and of corrupting public officials are often laid at the door of the trusts. As a result modern governments have found some form of regulation necessary. In the United States the Sherman Antitrust Law (1891) forbids contracts or combinations in restraint of, or in monopoly of, "interstate" trade. Many of the commonwealths have also legislated against trusts, although such legislation is frequently evaded, and much of it has been declared invalid by the courts. At present efforts are being made to secure publicity, and a certain amount of restraint is imposed by increasing taxation.

(b) Railroad regulation. Railroads differ from ordinary industrial enterprises in several important respects. They are natural monopolies, and active competition among them is uneconomic and undesirable. Since their greatest expenses are fixed charges, little affected by the quantity of business, their rates cannot be fixed on the basis of cost of production, but must be levied in accordance with "what the traffic will bear." This makes possible unjust

discriminations affecting persons, places, and commodities. Finally, they are "quasi-public corporations," exercising privileges and performing services that affect the general welfare. As a result, all states have taken action looking to their control or regulation. In Prussia, Austria, Hungary, Australia, and elsewhere railways are owned and operated by the government. In France limited charters are granted to private companies, with the provision that the railways become the property of the state after a certain period. Meantime regulation by the government is extensive. In Great Britain and the United States railways are left in private hands, but provision is made for government regulation. In Great Britain a commission supervises the operation of railroads, discrimination is forbidden by law, and maximum rates must be approved by the Board of Trade. Most of the United States commonwealths have established railroad commissions and have passed laws against discrimination and combinations. The federal Interstate Commerce Act (1887), as extended by the Elkins Law (1903), together with the Antitrust Law (1891), aims to maintain competition by preventing combinations and "pooling," and at the same time forbids discriminations or rebates, and prohibits a greater charge for a shorter than for a longer distance over the same line. An Interstate Commerce Commission of five members, appointed by the president, is given authority to supervise these provisions, but its powers have thus far been limited by evasions and by adverse judicial decisions.

(c) The tariff. In ancient and medieval times both internal and external trade was hampered by burdensome taxes, tolls, prohibitions, and monopolies. Even after internal trade was freed from these restrictions, the growth of commerce and colonies and the keen national rivalries of the seventeenth and eighteenth centuries led to that regulation of manufactures and commerce known as the mercantile system. After the Industrial Revolution the economic supremacy of England and her transition from an exporter to an importer of food, as manufactures replaced agriculture, led to the removal of duties on manufactures and finally on agricultural products. Other states followed a similar tendency until the revival of national spirit in Germany, Italy, and elsewhere during the

nineteenth century caused a strong reaction in favor of protection. In the United States the protective policy was adopted after the War of 1812, when foreign competition threatened to destroy the beginnings of American industry, and, except for a brief period in the middle of the nineteenth century, it has continued to the present time. Even in Great Britain, whose industrial supremacy is now threatened, there is a strong movement in favor of protective duties.

Aside from the value of import duties as an easy and profitable method of raising revenue, the leading arguments at present advanced in their favor are:

(a) The infant-industry argument. Newly started industries, unable to compete with older and better-established foreign rivals, need temporary assistance during their transition period. This will be amply repaid by lower prices, due to competition, after the home industries are fully developed. This is evidently not defensible as a permanent policy.

(b) The variegated production argument. This emphasizes the value of national industrial independence and a well-rounded economic life. Otherwise a state is at the mercy of other states for a part of its economic existence, and in case of war may find itself seriously handicapped.

On the other hand, those who favor free trade reply that in foreign trade states are not rivals, but customers; and that if imports are restricted by high duties, exports must be correspondingly diminished. If trade is unhindered, every one may buy in the lowest and sell in the highest market. Each nation may thus develop its natural resources to the greatest degree, and the production and wealth of the world will be accordingly increased. They claim that protection is an unnecessary tax on the consumer and interferes with the adjustment of economic forces; that while protecting some industries it destroys others; that it involves large-scale political corruption and stirs up national rivalries and hatreds.[1]

At the same time it must be remembered that free trade is a cosmopolitan ideal, and, while augmenting the wealth of the world

[1] Seligman, Principles of Economics, p. 511.

as a whole, might be injurious to states with poor economic resources, whose capital and labor would be attracted to states offering greater advantages. In the present age of national rivalries states are not unselfish enough to increase general welfare at the expense of their own existence, and states whose resources or industrial methods are inferior or undeveloped will probably try to balance such handicaps by protective tariffs. At present Great Britain is the only industrial state on a free-trade basis. Even her colonies, while establishing preferential rates with the home state, have adopted the principle of protection, and Japanese and American competition may compel Great Britain to modify her present system. On the other hand, the United States, whose resources have been developed more rapidly because of protection, has reached a position of industrial supremacy comparable to that of England a century ago, and a considerable reduction of import duties would probably be to her advantage.

3. *Regulation of labor.* In the present industrial era the rights, duties, and privileges of a growing laboring class must be readjusted to accord with existing conditions. Legislation for this purpose began in England, where the evils of the *laissez-faire* principle as applied to new industrial conditions were first apparent. In the remainder of Europe and in America it came later, but is gradually expanding. Considerable diversity in labor legislation is found in the United States, since such regulation comes under commonwealth and not federal jurisdiction, and varies in accordance with the industrial development of the various sections of the country.

Legislation in behalf of the laborer has assumed three principal forms, dealing with:[1]

(a) Conditions of employment. Such regulations fix an age limit below which children may not be employed, limit the hours of labor, and protect laborers against accident or disease due to dangerous or unhealthy trades.

(b) Conditions of remuneration. Laws have been passed compelling regular and frequent payment of wages in cash; and in Australia minimum wages have been fixed in many trades.

[1] Seligman, Principles of Economics, pp. 430–434.

(c) Results of employment. Under this head the most important action of states deals with employers' liability for injuries sustained by workmen, and compulsory insurance of laborers against accident, illness, and old age, — the cost being divided among the employer, the government, and the workmen. In New Zealand and parts of Australia compulsory arbitration of labor disputes is enforced.

States differ in the degree to which they interfere for the benefit of laborers. The regulation of hours of employment, limited at first to women and children, has now been extended to men in certain occupations by all industrial states. The legal principles of "implied risk" and "fellow servant" limit the liability of employers in the United States far more than is the case in most states. Compulsory insurance, starting in Germany and imitated in many states, has met with little favor in the United States, and few states follow Australasia in fixing a minimum wage or applying compulsory arbitration to labor disputes.

4. *Education.* Most states regulate education, encourage it by granting subsidies, or undertake its management as a public function. Public education is desirable, not only for the welfare of individuals, but also for the safety and progress of the state. Education decreases crime and poverty, it equips men for the various trades and professions by which the resources and interests of the state may be utilized or conserved, and it makes citizens capable of taking an intelligent part in public affairs.

5. *Care of the poor and incapable.* In this function the state supplements the activities of private individuals and of religious institutions. It makes provision, usually through its local divisions, for the care of the destitute, especially aged persons and children. It maintains reform schools, institutes for defectives, hospitals, and asylums. By these means needy individuals are aided and the welfare of society safeguarded.

6. *Sanitation and health.* To counteract the ignorance or selfishness of individuals, states take precautions against the rise and spread of disease. In this way they not only assist those directly concerned, but also protect society in general. Besides, the interests of the state, as well as the happiness and prosperity of individuals,

are concerned in preventing pauperism and crime and in increasing the effective labor power of its citizens. The regulation and inspection of foodstuffs are additional safeguards, and by restrictions on the manufacture and sale of alcoholic products the state aims to improve moral and social conditions as well as public health.

In addition, there are numerous other functions that states undertake, or regulations that they enforce, for the purpose of protecting individuals or promoting general welfare. State regulation of the practice of law, medicine, and pharmacy, the inspection of buildings, restrictions on public gambling, and Sabbath-observance laws are a few examples that show the difficulties in the way of any attempt to draw a definite line separating activities of private concern from those that, in the opinion of modern states, have a social significance sufficient to demand public action.

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